SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 338

CONRAD WOLFLE, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

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United States District Court, Western District of Washington, Northern Division.
November Term, 1930.

No. 41,369.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CONRAD WOLFLE,
Defendant.

INDICTMENT.

United States of America,
Western District of Washington,
Northern Division.—ss. Vio. Section 215 P. C.

The grand jurors of the United States of America being duly selected, impaneled, sworn, and

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*Page numbering appearing at the foot of page of original certified Transcript of Record.

charged to inquire within and for the Northern Division of the Western District of Washington, upon their oaths present: [2]

COUNT I.

That heretofore and prior to the first day of January, in the year of our Lord, one thousand nine hundred twenty-nine, Conrad Wolfle, hereinafter referred to as the defendant, had devised and intended to devise a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises from Joseph P. Trecker, George H. Kimball, Hugh Jones, P. A. Heney, Dr. William C. Keyes, John S. Dreibellis, and divers other persons whose names are to the grand jurors unknown, all hereinafter in this indictment called investors, which scheme and artifice was in substance and effect as follows, to wit:

The said defendant was to organize and cause to be organized a corporation under the laws of the Territory of Alaska to be known as the Cantu Mining Company, and was to control, manage and operate the said Company and to use the funds thereof without regard to the interest of the said investors and was to sell the shares of stock of the said company through and by means of newspaper and circular advertising and personal correspondence and by personal solicitation of said defendant and his agents. The said defendant was to induce and attempt to induce the said investors to pur-

chase stock of the said Cantu Mining Company by exaggerated, misleading, false and fraudulent representations, pretenses and promises as to the value and prospects of the alleged Cantu mine, as to the efforts required to obtain the property by the said defendant Conrad Wolfle, and the price the said defendant had paid therefor, as to the title under which the property was held by the said company, as to operations alleged to be in progress thereon and ore [3] mined and shipped therefrom, as to additional properties and equipment acquired for operations thereon, as to the qualifications and experience of the said defendant as a mining engineer and mine operator and his previous record in such enterprises and as to the safety, the great prospects of profit from and consequent desirability of an investment in the stock of said Cantu Mining Company, which said pretenses, representations and promises were in substance and effect as follows, to wit:

1. That the said Cantu Mining Company owned twenty mining claims on Cantu Mountain, near Hyder, Alaska, free and clear of all encumbrances, whereas in truth and in fact as the said defendant then and there well knew, the said property had been sold at foreclosure sale to satisfy labor liens and claims of large amounts filed thereon prior to the purchase by the said Cantu Mining Company or by the said defendant, and the said Cantu Mining Company owned and held only an equity of redemption therein.

2. That Conrad Wolfle and associates had purchased the said mining claims for Two Hundred Fifty Thousand ($250,000) Dollars; that a year prior to the said purchase, the said Conrad Wolfle had made an investigation of the said property for a group of Spokane, Washington, men and after such examination had himself offered the owners One Hundred Fifty Thousand ($150,000) Dollars therefor, which offer had been refused, and that thereafter the said Conrad Wolfle and associates had joined in the enterprise of purchasing the said property at the said price of Two Hundred Fifty Thousand ($250,000) Dollars and had organized the said Cantu Mining Company on the basis thereof; whereas, in truth and in fact, as the said defendant then and there well [4] knew, the said defendant and associates had not paid Two Hundred Fifty Thousand ($250,000) Dollars for the said mining property but had paid and had contracted to pay only the sum of Thirty-two Hundred ($3200) Dollars.

3. That the said Cantu mine was in operation; that considerable ore had already been shipped to the smelter from which smelter returns were expected, aggregating from Twenty-five Thousand ($25,000) Dollars to Thirty Thousand ($30,000) Dollars; that considerable quantities of ore had been sacked ready for shipment; that a number of shipments would be made during the summer of 1929; that a tunnel was being driven on one of the cross-fissure veins, and that about one hundred

thousand (100,000) tons of ore had been blocked out; whereas, in truth and in fact, as the said defendant well knew, the said mine was not in operation; the said company had not a single employee at work thereon and did not have possession of the property; no ore had been shipped by the said company and no smelter returns of Twenty-five Thousand ($25,000) Dollars to Thirty Thousand ($30,000) Dollars, nor any other sum, were expected therefrom; no ore had been sacked by the company ready for shipment and there would be no shipments of ore during the summer of 1929; no tunnel was being driven on a cross-fissure vein or otherwise, and no ore was blocked out, but all the said representations were false and fraudulent and were to be made and were made only for the purpose of deceiving the said investors into parting with their money and property in exchange for stock of said company.

4. That shortly prior to September 8, 1929, another large ore body had been discovered, that is to say, a large porphyry quartz dyke carrying good gold values which would be a tremendously large ore body when developed, and [5] more valuable than anything theretofore discovered on the property; whereas, in truth and in fact, as said defendant then and there well knew, no such new ore dyke or vein had been discovered and the said representation was to be made and telegraphed from Alaska to the stock sales office of the said Cantu Mining Company at Seattle, Washington, only for

the purpose of inciting greater activity among the stock sales agents and to entice the said investors more readily to purchase the stock of the said company.

5. That the said Cantu Mining Company had contracted for a large plant of machinery, engine, compressor, electric light plant, ore cars, air pipe, rails, trackage and a small portable sawmill and all other machinery necessary to develop the said Cantu mine as cheaply and economically as possible; whereas, in truth and in fact, as the said defendant then and there well knew, no such machinery and equipment had been contracted for and none would thereafter be contracted for or purchased.

6. That the said defendant had obtained for the said Cantu Mining Company a five-year lease on the "Riverside Group" (meaning the property of the Riverside mine, near Hyder, Alaska), the 100-ton mill and all equipment thereon; that this immediately gave the Cantu Mining Company a mill so that operations could start as soon as weather conditions permitted, on low grade as well as high grade ore; whereas, in truth and in fact, as the said defendant then and there well knew, no such lease had been made nor would be made; the mill referred to was not of one hundred tons per day capacity but only a 50-ton mill and even if acquired, the said mill would by no means have enabled the said Cantu Mining Company to operate its property. [6]

7. That the management of the Cantu Mining Company was of the highest responsibility, that the officers and directors were business men of high character, business experience and standing; that women investors could place their full confidence in these men "without fear of loss or wild-catting" and know that every cent received from stock sales would be invested in the property itself; whereas, in truth and in fact, as the said defendant then and there well knew, the management of the said company, being in the hands of the said defendant, was irresponsible and unreliable; neither women or other investors could rely on the officers and directors to protect their investments and every cent received from stock sales would not be invested in the property but the larger proportion thereof would be consumed in selling expenses and would be appropriated by the said defendant for his own use and benefit.

8. That shortly prior to August 22, 1929, one of the biggest mining companies in the country had offered one dollar ($1) a share for all outstanding stock of the Cantu Mining Company; that a few days later the same company had offered One Million ($1,000,000) Dollars for the Cantu property; that both of these offers had been rejected and that the said offering company was considering the purchase of one hundred thousand (100,000) shares of the treasury stock of the said Cantu Mining Company; that regardless of whether or not any such big deal was made, the said Cantu stock would

go up to one dollar ($1) a share very shortly thereafter; whereas, in truth and in fact, as the said defendant then and there well knew, no such offers had been made by any bona fide mining company, and the said representations were to be and were made by the said defendant [7] only for the purpose of enticing and deceiving said investors; the condition of the said Cantu Mining Company did not warrant its stock going up to one dollar ($1) a share and there was no prospect of such advance.

9. That an investment in said Cantu Mining Company was a mining investment from which the usual hazards had been eliminated; that Cantu was an operating mine and not a prospect; that men and women of small means were the people above all others who should make investments in mines, that is, particularly deserving people of small means who wished to invest in Cantu stock with assurance against loss of principal; that the said defendant would guarantee to return their money with ten per cent interest at the end of [8] a year if the said investors should not then be satisfied; whereas, in truth and in fact, as the said defendant then and there well knew, the usual hazards of mining investments had not been eliminated from the said Cantu Mining Company stock, but on the contrary were greater than usual; the said Cantu Company's property was not an operating mine but only a doubtful prospect in which people of small means would be very unwise to invest, and the assurances and guaranties by the said defendant for the repay-

ment of money invested in the said company would be and were utterly worthless.

And the grand jurors further present and say that all of the aforesaid pretenses, representations and promises would be and were false and untrue and were to be and were made by the said defendant for the purpose of enticing and deceiving the said investors into paying over and delivering to him, the said defendant, their money and property in payment for stock of the said Cantu Mining Company, which said stock was then and there of much smaller value than the price to be paid by the said investors therefor, and the said defendant would and did defraud the said investors.

It was a further part of the said scheme and artifice that the said defendant would and did take for himself large blocks of the stock of the said Cantu Mining Company as promotion stock in alleged payment for properties conveyed by him to the said company and for alleged services and other considerations of small value and that the said defendant would and did sell and endeavor to sell all or large portions of said promotion stock held by him to the said investors, pretending and representing that the money paid by the said investors therefor would go to the treasury of the company and the development of said mining property; whereas, in truth and in fact, as the said defendant then and there well knew, the money received from such promotion stock was to be and was retained

by him for his own use and benefit; and as a further part of said scheme and artifice, the said defendant would and did neglect and fail to keep adequate and accurate books of accounts and records of receipts and disbursements of money collected from said investors on sales of stock of said company, and so planned and schemed to escape accounting to the said company and to the said investors for money improperly retained by him and appropriated to his own use and benefit.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That the said defendant, so having devised, and intending to devise, the aforesaid scheme and artifice, for the purpose of executing the same, and attempting so to do, on, to wit, the eighteenth day of September, in the year of our Lord, one thousand nine hundred twenty-nine, did knowingly, wilfully, unlawfully and feloniously place and cause to be placed in the United States Post Office at Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this Court, to be sent and delivered by the Post Office establishment of the United States, a certain letter, in an envelope with postage thereon duly prepaid, then and there addressed to

Mr. Joseph P. Trecker,
1200 Yew Street,
Bellingham,
Washington [9]

which said letter was then and there in words and figures as follows, to wit:

"Northern Life Tower
12th Floor
Tel. Se. 0984

Financing, Developing and Managing of Mining Properties

Conrad Wolfle
Incorporated

Seattle, Washington
September 18th, 1929

Mr. Joseph Trecker,
1200 Yew Street,
Bellingham,
Washington.

My dear Sir:

Mr. Oppelt tells me that you have been very unfortunate in your past investments; that you were a man up in years and could not afford to lose any more money, as your earning capacity was extremely limited.

I can readily understand how you feel, Mr. Trecker, and I don't blame you in the least for taking that attitude. There are so many different investments being offered to the public, that it is hard for one to decide which is the best. If you had been that particular in the past, you would have money now.

My business is mining. I have devoted the greater part of my life to this endeavor. I don't mean to appear egotistical, but I won't take a back seat for any man in my line. I have made lots of money for my friends as well as for myself, in mining. I know mining from a practical as well as a technical standpoint. I have received large "fees" as a Mining Engineer for examining a great many properties in the United States and Canada, and Alaska, and I know a Mine when I see one. I've put my own money in Cantu Mine as well as induced my closest friends to do so. From every conceivable standpoint, I have never seen a better property than Cantu.

Mr. Oppelt stated that you want to make money, and would like a yearly income as well as to have your principal secure, and to increase it in value. He said you would make one more investment if you were assured against the loss of your principal.

Mr. Trecker, it is not necessary for me to do this, but I will in your case: (I want this to be strictly confidential.) I could not, nor would I, do this for all our stockholders, but I have made this proposition to a couple of other deserving people so that they may enjoy better things in life, and I will do the same for you. [10]

If you care to invest $1000.00 in Cantu Mining Company stock with me, at 50¢ per share,

which will give you 2000 shares of the Corporation Capital Stock, and are not satisfied with the returns on your investment at the end of a year, I personally will refund your money and pay you 10% interest for the use of your money.

Within a very short time the price of Cantu Stock will advance to $1.00 per share. I trust that you will take advantage of the present 50¢ offer.

Yours very truly,

O-W-S (Signed) CONRAD WOLFLE"

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

COUNT II.

That the said defendant, Conrad Wolfle, so having devised and intended to devise the scheme and artifice described in the first count of this indictment, the allegations concerning which scheme and artifice in said first count being by reference thereto incorporated herein and made a part of this second count as fully as if here repeated, for the purpose of executing the said scheme and artifice and attempting so to do, did knowingly, wilfully, unlawfully and feloniously, on or about the fifteenth day of August, in the year of our Lord, one thousand nine hundred twenty-nine, place and cause to

be placed in the United States Post Office at Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this Court, to be sent and delivered by the Post Office establishment of the United States, a certain letter, in an envelope, with postage thereon duly prepaid, then and there addressed and directed to

Mr. Geo. H. Kimball,
515 Melrose No.,
Seattle, Washington

which said letter was then and there in words and figures as follows, to wit:

"Northern Life Tower
12th Floor
Tel. Se. 0984

Financing, Developing
and Managing of
Mining Properties

Conrad Wolfle
Incorporated

Seattle, Washington
August 15, 1929

Mr. Geo. H. Kimball,
515 Melrose No.,
Seattle, Washington.

Dear Sir: [11]

Regarding the Cantu Mine at Hyder, Alaska, I will give you further information in addition to what you already know.

First: The property has exceptional merits, and has the greatest ore-showing of any Mine I ever knew,—and I know mining—not only the promotional end of it, but still more about the engineering and operating of properties.

Second: Cantu will be the first to ship high-grade ore out of Texas Creek, Portland Canal. We did ship some ore, and in 60 days from now we will have received smelter returns, which will probably be $25,000 or $30,000. I can assure you that Cantu will be shipping steadily all the year round, barring accidents. I fully believe that if there is no delay in the development of the Mine, and nothing comes up over which we have no control, Cantu will pay at least 50¢ a share dividends to its stock-holders. Because Cantu has such a low capitalization, I can guarantee these facts to you, and if the Mine does not pay, I stand ready to pay you your money back with 10% interest.

If Cantu does not make one of the greatest Mines that has ever been developed, then I do not know my business,—and I have brought out in the past four big winners. I neither give nor take odds from any man when it comes to mining and the mining business. I am not a stock salesman, but I do claim to be a successful Mine operator and Engineer.

When history is written, Cantu will have been a large dividend-paying Mine, and our great-grandchildren will be talking about the famous Cantu.

Yours very truly,

— (Signed) CONRAD WOLFLE."

CW:S

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

COUNT III.

That the said defendant, Conrad Wolfle, so having devised and intending to devise the scheme and artifice described in the first count of this indictment, the allegations concerning which scheme and artifice in said first count being by reference thereto incorporated herein and made a part of this third count as fully as if here repeated, for the purpose of executing the said scheme and artifice, and attempting so to do, did knowingly, wilfully, unlawfully and feloniously, on or about the twelfth day of September, in the year of our Lord, one thousand nine hundred twenty-nine, place and cause to be placed [12] in the United States Post Office at Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this Court, to be sent and delivered by the Post Office establishment of the United States, a certain letter in an envelope with postage thereon duly prepaid, then and there addressed to

Mr. J. P. Trecker,
1200 Yew Street,
Bellingham,
Washington.

which said letter then and there consisted of seven pages, being partly typewritten and partly in print, the letterhead, address and first two paragraphs being as follows:

"Northern Life Tower
12th floor
Tel. Se. 0984

Financing, Developing and Managing of Mining Properties

Conrad Wolfle
Incorporated
Seattle, Washington,
September the twelfth, 1929

Mr. J. P. Trecker,
1200 Yew St.,
Bellingham,
Washington.

Dear Sir:

In this day of gigantic mergers and consolidations of every conceivable kind and nature, we all know that the number of enterprises in our country are being reduced, and business as a whole is conducted differently. This affects the stock market, causing untold losses. No one knows what will happen to their investments. Every one wants to make money and protect the investments they have already made. Speculation never has equalled the present era.

Because of this condition I am writing you and enclosing literature about our investment offering. I am confident no other issue surpasses it."

the second, third and fourth pages being printed advertising matter of the said Cantu Mining Company, and the fifth, sixth and seventh pages again being in typewriting, the final paragraph reading as follows:

"Cantu Mine will make mining history. Several large mining Companies believe this to be a fact. Stockholders of this Company are to be congratulated on their excellent judgment.

Very truly yours,

O-CW-S Enc. (Signed) CONRAD WOLFLE."

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America. [13]

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

COUNT IV.

That the said defendant, Conrad Wolfle, so having devised and intended to devise the scheme and artifice described in the first count of this indictment, the allegations concerning which scheme and artifice in said first count being by reference thereto incorporated herein and made a part of this fourth count as fully as if here repeated, for the purpose of executing the said scheme and artifice and attempting so to do, did knowingly, wilfully, unlawfully and feloniously, on or about the twenty-seventh day of November, in the year of our Lord, one thousand nine hundred twenty-nine, place and cause to be placed in the United States Post Office

at Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this Court, to be sent and delivered by the Post Office establishment of the United States, a certain letter, in an envelope, with postage thereon duly prepaid, then and there addressed and directed to

Mr. P. A. Heney,
Seaboard Building,
Seattle,
Washington.

which said letter was then and there in words and figures as follows, to wit:

"Northern Life Tower
12th floor
Tel. Se. 0984

Financing, Developing and Managing of Mining Properties

Wolfle Engineering & Financing Corporation
Seattle

November 27th, 1929

Mr. P. A. Heney,
Seaboard Building,
Seattle.

Dear Mr. Heney:

As you already know, I just recently returned from Alaska. In order that you may go over more at your leisure the things which I told you, I am herewith giving you in detail a statement of the big piece of business which I was able to bring to a close while up in Alaska this time:

We have purchased the Silver Bell Group of Five claims, on the West Fork of Texas Creek. I have been after this property for more than a year. It is considered by everyone who knows the property, the most promising one on Texas Creek, next to Cantu itself. [14]

We feel that this a wonderful asset to our Corporation. There is a great amount of high-grade shipping ore, and as the government Highway will be completed to the property by next summer, shipment of high-grade ore will commence at once. The property will more than pay for itself from the very beginning. No money will be required by the Corporation to develop this mine. If it had not been located in a place where it was inaccessible, that property would long ago have been developed into a paying mine.

In addition to the Silver Bell property, we have also taken a five-year lease on the Riverside Group, including their 100-ton mill and all equipment. This is to be paid out on a 15% royalty,—no cash obligation required. The purchase price is $120,000, to be paid at the end of five years if we should decide to keep the property and all equipment.

This immediately gives the Cantu a Mill, and it puts us in a very good position financially. Most of the Mining Companies find themselves in the predicament after a mine is

developed, of needing additional funds to build a mill. In other words, we can start operating as soon as weather conditions permit, on our low-grade as well as high-grade ore.

We have also acquired a small parcel of ground which is well covered with heavy timber. This lies at the fork of Texas Creek highway and our own road. There are two large buildings on this property, a big pile of lumber,—mostly ship-lap,—a great deal of equipment, boarding-house, black-smith tools, sleighs, wagons, pack saddles, beds and bedding,—and other articles too numerous to mention.

We have all this for One Thousand ($1000) Dollars cash. This equipment we need for our Silver Bell property. The way it stands now, the Cantu Mining Company, in my judgment, will in the near future become one of the outstanding mining properties in Southeastern Alaska, and, in my judgment, all gambles are eliminated. The money invested in the Cantu may be considered a safe investment with large returns in the very near future.

Yours very truly,

(Signed) CONRAD WOLFLE

CW:S Managing Director,

Cantu Mining Company."

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: [15]

COUNT V.

That the said defendant, Conrad Wolfe, so having devised and intended to devise the scheme and artifice described in the first count of this indictment, the allegations concerning which scheme and artifice in said first count being by reference thereto incorporated herein and made a part of this fifth count as fully as if here repeated, for the purpose of executing the said scheme and artifice and attempting so to do, did knowingly, wilfully, unlawfully and feloniously, on or about the thirteenth day of June, in the year of our Lord, one thousand nine hundred twenty-nine, place and cause to be placed in the United States Post Office at Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this Court, to be sent and delivered by the Post Office establishment of the United States, a certain letter, in an envelope, with postage thereon duly prepaid, then and there addressed and directed to

Mr. John S. Dreibellis,
6102 So. Thompson Street,
Tacoma, Washington

which said letter was then and there in words and figures as follows, to wit:

"Northern Life Tower
12th floor
Tel. Se. 0984

Financing Developing
and Managing of
Mining Properties

Conrad Wolfle
Incorporated
Seattle, Washington

June 13th, 1929

Mr. John S. Dreibellis,
6102 So. Thompson Street,
Tacoma,
Washington.

Dear Sir:

I was indeed glad when Mr. Koch brought in your order and the money for two Hundred (200) shares of stock in Cantu. It meant more to me than if some stock salesman or a business man had come in and bought Twenty thousand (20,000) shares.

When I met you over in the Tacoma Hotel the other day, I was satisfied that you had the right stuff in you. You are a young man who will make his mark in this world. You could not have taken hold of anything better, that would bring you more money and more joy, than Cantu Mining Company's stock.

And by fall, I know you will have enough money earned to finish your schooling. I assure you I am going to do all I can to [16] help you in closing any sales that you may work up. Do not hesitate to call on me when you have some prospective purchasers.

Do not forget that the Cantu is a rare jewel of a property that will rapidly develop into a large dividend-paying Mine.

Yours very truly,

CW:S (Signed) CONRAD WOLFLE"

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

COUNT VI.

That the said defendant, Conrad Wolfle, so having devised and intending to devise the scheme and artifice described in the first count of this indictment, the allegations concerning which scheme and artifice in said first count being by reference thereto incorporated herein and made a part of this sixth count as fully as if here repeated, for the purpose of executing the said scheme and artifice and attempting so to do, did, knowingly, wilfully, unlawfully and feloniously, on or about the thirtieth day of November, in the year of our Lord, one thousand nine hundred twenty-nine, cause to be placed in the United States Post Office at Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this Court, to be sent and delivered by the Post Office establishment of the United States, a certain letter and enclosure in an envelope with postage thereon

duly prepaid, then and there directed and addressed to

Dr. William C. Keyes,
Bellingham,
Washington

the said letter so enclosed in the said envelope being on the letterhead of the Wolfle Engineering and Financing Corporation, and in words and figures as follows, to wit:

"Northern Life Tower
12th floor
Tel. Se. 0984

Financing and Developing and Managing of Mining Properties

Wolfle Engineering & Financing Corporation

Seattle Nov. 30-1929

Dear Doctor:

Having misplaced the original letter, I have secured the carbon copy from the office and am herewith enclosing same. I believe this letter will thoroughly cover any information you desire on Cantu's recent property acquisitions. [17]

Kindest personal regards from Mr. Hemrich and myself, I am

Sincerely

(Signed) E. E. OPPELT."

there being enclosed also with the said letter in the said envelope, a carbon copy of a letter dated November 27, 1929, addressed to Mr. E. E. Oppelt, 1201 Northern Life Tower, Seattle, Washington, and in words and figures as follows, to wit:

November 27th, 1929.

Mr. E. E. Oppelt,
1201 Northern Life Tower,
Seattle, Wash.

Dear Mr. Oppelt:

Since returning from Cantu Mine I have been so completely tied up with General Ashton, at Tacoma, that I have not had the time to give you the details of the additional properties acquired for Cantu, which I wired the office about. I am leaving the letter at the office for you as I am leaving for Spokane tonight.

So there will be no misunderstanding, I want you to get this straight.

We purchased the Silver Bell Group of Five claims, on the west fork of Texas Creek. This property is about three miles west of Cantu and a mile and one-half off the U. S. Government Highway. The highway is graded on past the property and will be graveled in the spring. There is about two miles of highway to gravel. The balance of the highway is graveled to Hyder.

There is a great deal of work done on Silver Bell such as stripping open cuts and small shafts which expose several hundreds tons of High grade shipping ore that we will move early in the spring. As you know, we have been after this property ever since we bought Cantu. Had it been located in a place where it was

accessable here to fore, it would have long ago developed into a paying mine.

Joe Conners, the locater of Silver Bell is an old man and crippled with rheumatism so badly that he can barely get around. Because of such health he was forced to sell out and go to a warmer and dryer climate. Mr. Conners came to Mr. E. D. Haddon, cashier of the Bank of Hyder and Tresurer of Cantu Mine while I was in Hyder and then and there we [18] closed the deal. The price was $10,000.00. One Thousand ($1,000.00) Dollars down payment and $9,000.00 on August 1st, 1930.

The ore on Silver Bell runs from $100.00 to $150.00 per ton and the mine will pay for itself from the every start. Practically the only money necessary to put the mine in production will be spent on building a road for about one and one-half miles from the Government Highway to the mine. $5,000.00 should be ample money to start.

We also purchased twenty (20) Acres of ground which is well covered with timber. This lies at the fork of Texas Creek highway and the road leading to Cantu Mine. There are two large buildings on this property, a large pile of Lumber, mostly ship-lap, a great deal of equipment, Mess house and Bunk Houses, blacksmith ship and tools, sleighs, wagons, pack saddles, beds, bed springs and mattresses. This property is not mineralized, but it makes an

ideal junction for Cantu, Silver Bell and Riverside.

Last but by no means least, we secured a Five (5) year lease with option to purchase, Riverside Mining Companys property and equipment. This property consists of Seven (7) claims, Two (2) claim are patented. Over 2,000 feet of underground work completed from which approximately One Hundred and Twenty-five Thousand Dollars, ($125,000.00) has been mined from three (3) stopes. An excellent 100 Ton mill with floatation equipment, of the latest machinery, Deisel power plant, equipment in the mine, Bunk houses and Mess house and tools. The underground work is excellent and best obtainable. This mill has been shut down, as well as the mine, for about a year, due to damnable management by inexperienced Operators which caused discention among the stockholders and placed them in serious financial difficulties and at the mercy of the creditors. Prior to Cantus acquisition of this property a test run was made of 45 tons mined from new ore shute discovered on this property and the smelter returns as of October 7th, 1929, showed that the net returns were $3,065.56 or about $67.00 per ton. There are at present about 300 tons of this ore on the dump.

We secured this valuable property on a 15% net royalty basis, only from ore mill and mined

from Riverside mine, and without making one cent down payment, If we wish to purchase this property we can do so within the life of the lease for $120,000.00, the royaltys paid to apply on the purchase price. We are not compleed to make any fixed tonnage run or to start operations at any time, under the terms of the lease, [19] however we do expect to have the mill and mine in operation in January, 1930. If during the life of the lease we wish to discontinue operations we can do so. Absolutely no red tape attached to this deal. The Riverside Corporation was in position to loose out entirely had Cantu not taken them over.

This property is six miles from Hyder, on the U. S. Government Highway and the same distance from Cantu. Without a doubt it is a splendid deal for Cantu Mine, because to build a mill at Cantu property would be equal in dollars as to the purchase price for Riverside property and its entire equiptment. I feel confident, Riverside Mine with half a chance will more than pay for itself within the next three years.

With these extra valuable holdings it most certainly does not take much of a mathamatician to figure out what it means for the stockholders of Cantu Mining Company.

When you consider, in their inseption, the stock of Calumet-Hecla, California Consolidated, Quincy, Butte and Boston, Dominion

and many many others was sold to the public from $1.00 to $5.00 per share and in many cases these properties were not developed nearly as far as Cantu is at present, you can readily see that Cantu stock at $.50 per share is given away. The stock never should have been sold at less than par value, and it is a steal at that price.

In my judgment, Cantu Mining Company will make mining history and your and our grandchildren will still be talking about it after we are dead and gone.

Very truly yours,
CONRAD WOLFLE."

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

ANTHONY SAVAGE,
United States Attorney.
TOM DE WOLFE,
Asst. United States Attorney.

[Endorsed]: A True Bill. B. W. Pettit, Foreman Grand Jury. Anthony Savage, U. S. Attorney.

[Endorsed]: Presented to the Court by the Foreman of the Grand Jury in open Court, in the presence of the Grand Jury, and filed in the U. S. District Court Apr. 2, 1931. Ed. M. Lakin, Clerk. By S. E. Leitch, Deputy. [20]

[Title of Court and Cause.]

MOTION TO MAKE MORE DEFINITE AND/OR (IN THE ALTERNATIVE) TO STRIKE.

Comes now the defendant through his counsel, Wettrick, Wettrick & Flood and H. S. Garvin and without waiving his demurrer filed herein but at all times insisting thereupon and reserving exception to any order overruling the said demurrer, moves the Court for an order directing the plaintiff to make its indictment herein more definite and certain in the following particulars:

I.

On page 2 in paragraph I, where at line 10 the indictment sets forth "and divers other persons whose names are to the grand jurors unknown," defendant prays for an order requiring plaintiff to set out and furnish the names of all such alleged investors whose names may at the date of indictment, or at any time thereafter and up to the present date, be known to the grand jurors, or to the plaintiff, or to the United States District Attorney, or to the Postal authorities.

And, in the alternative, if no such names are known to the foregoing representatives of plaintiff, defendant prays for an order striking the said allegation from the indictment.

II.

Defendant prays for an order directing plaintiff to set forth the time, place and the occasion when

the scheme described in the second paragraph on page 2 was contrived, [21] devised or agreed upon, and further to set forth whether the defendant is alleged to have devised the plan himself to organize the corperation therein referred to, or if others participated with him in planning to organize the said corporation, to set forth the names of such other persons.

III.

Defendant prays for an order striking the allegation in line 18, on page 2, reading as follows: "without regard to the interest of the said investors," on the ground that the said allegation constitutes a mere conclusion of the pleader and lacks the foundation of any facts whatsoever upon which such a conclusion can rest.

IV.

Defendant moves to strike from the indictment the phrase beginning on line 5, page 2 thereof, reading as follows: "the great prospects of profit from and consequent desirability of an investment in the stock of said Cantu Mining Company," on the ground that an optimistic prediction with reference to the expectation of profit does not constitute a crime under the law.

V.

That the defendant moves to strike the alleged representations and promises particularized and

set forth in paragraphs numbered 1 and 2 on page 3, 3 and 4 on page 4, 5 and 6 on page 5, 7 and 8 on page 6, and 9 on page 10, all of which paragraphs are alleged to constitute a portion of the scheme, device, or artifice by which defendant is alleged to have intended to defraud investors, upon the ground that it does not appear when and where said promises and representations were made, or to whom they were made, or that they were made prior to the acts or conduct thereinafter enumerated in the said indictment and which [22] acts of conduct are alleged to have been engaged in for the purpose of executing the alleged plan or device; and upon the further ground that under the law it is necessary to establish the scheme, plan or device as having been arrived at prior to any conduct having been taken pursuant thereto and that it must affirmatively appear in an indictment under the law that any such scheme or device existed as a condition precedent before any acts or conduct can come within the ban of the statute.

And, in the alternative, defendant moves for an order requiring the plaintiff to set forth when and where, and under what circumstances, and to what persons said promises or representations were made.

VI.

Defendant further moves for an order directing the plaintiff to set forth the time and place when the part of the said scheme and artifice alleged in

the indictment, commencing with line three on page 8, took place.

VII.

Defendant moves to strike the whole of the paragraph numbered 8 on page 6, on the ground that the paragraph states no ultimate fact but constitutes merely the conclusion of the pleader and that that conclusion and opinion of the pleader therein stated is inflammatory and prejudicial to this defendant.

VIII.

Defendant moves to strike paragraph 9 on page 7, on the ground that the paragraph states no ultimate fact but constitutes merely the conclusion of the pleader and that the conclusion and opinion of the pleader therein stated is inflammatory and prejudicial to this defendant.

.....,

.....,

Attorneys for Defendant. [23]

Copy received January 8, 1932.

DE WOLFE,

Asst. U. S. Atty.

[Endorsed]: Filed Jan. 8, 1932. Ed. M. Lakin, Clerk. [24]

[Title of Court and Cause.]

MOTION TO QUASH.

Comes now the defendant and appearing through his attorneys, Wettrick, Wettrick & Flood and H. Sylvester Garvin, moves the Court for an order quashing the indictment on file herein, upon the ground and for the reason:

I.

That it states no fact sufficient to constitute a crime against the laws of the United States.

II.

That in substance it is founded, not upon facts, but upon the conclusions of the pleader who framed it, and that the said conclusions and opinions of the pleader are couched in inflammatory language and constitute great prejudice to this defendant.

WETTRICK, WETTRICK & FLOOD,
H. SYLVESTER GARVIN,
Attorneys for Defendant.

Copy received Jan. 8, 1931.
TOM DE WOLFE,
Asst. U. S. Atty.

[Endorsed]: Filed Jan. 8, 1932. Ed. M. Lakin, Clerk. [25]

[Title of Court and Cause.]

DEMURRER.

Said defendant, Conrad Wolfle, by Wettrick, Wettrick & Flood and H. Sylvester Garvin, his attorneys, comes into Court and says that the said indictment, and all of the counts thereof, and the matters and things therein set forth are, as therein alleged and set forth, not sufficient in law to compel the said defendant to answer thereto.

I.

The Court has no jurisdiction of the person of the defendant or the subject matter therein stated.

II.

That several crimes have been alleged and improperly united.

III.

That the indictment does not state facts sufficient to constitute a crime against the United States of America.

IV.

That said indictment is defective and uncertain in this, that it does not set forth the time and place where the said scheme or plan was devised or where and when the said defendant contrived the said scheme or plan.

V.

That said indictment does not set forth any act or acts against this defendant sufficient to make him a party to [26] the said crime.

VI.

That the said indictment charges the formation of a plan or a device by setting out the conclusions and the opinions of the pleader and sets forth no sufficient facts upon which such conclusions and opinions can be founded. That moreover the said indictment alleges that the said plan thus charged was carried forward by certain representations and promises which consisted mostly of conclusions and opinions, all of which are inflammable and highly prejudicial and unnecessary to this indictment.

VII.

Said indictment attempts to carve out of separate counts various substantive crimes, all of which should be alleged in one count.

WETTRICK, WETTRICK & FLOOD,
H. SYLVESTER GARVIN,
Attorneys for Defendant.

Copy rec'd. Jan. 8, 1931.
DE WOLFE,
Asst. U. S. Atty.

[Endorsed]: Filed Jan. 8, 1932. Ed. M. Lakin, Clerk. [27]

[Title of Court and Cause.]

RULING ON MOTION TO STRIKE, DEMURRER AND MOTION TO QUASH. ARRAIGNMENT AND PLEA.

Now on this 8th day of January, 1932, Tom DeWolfe, Assistant United States District Attorney, appearing for the plaintiff and F. J. Wettrick, Esq., and Geo. E. Flood, Esq., appearing as counsel for the defendant, the defendant's exceptions to the Court's ruling on motion for continuance is presented, allowed and filed. On motion of Mr. Flood, H. Sylvester Garvin, Esq., is noted as associate counsel for the defendant. Said defendant is arraigned and answers that his true name is Conrad Wolfle.

The defendant now presents for filing a demurrer, motion to make more definite and certain, or in the alternative to strike, and supporting affidavit of the defendant, and motion to quash, and the same come on for hearing. Arguments are heard on the demurrer, and same is overruled and an exception noted. Arguments are heard on paragraph one of the motion to make more definite and certain and/or in the alternative to strike. The government counsel stating, in response to an inquiry of the court, that the government has no objection to, and will give the names, in its opening statement to the trial jury, therein sought to be disclosed that have come to the knowledge of the

government, the court denies the motion to strike, and an exception is noted to the defendant.

Arguments are heard separately on each of paragraphs two to eight, inclusive, of the motion and each is separately denied and a separate exception noted to each denial to said defendant.

Arguments are heard separately on each of paragraphs two to eight, inclusive, of the motion and each is separately denied and a separate exception noted to each denial to said defendant.

The motion to quash the indictment is denied, without argument, being based on the same grounds as the demurrer. An exception is noted to the defendant. Thereupon the defendant enters a plea of not guilty. (Journal No. 20, page 27.) [28]

[Title of Court and Cause.]

MOTION FOR CONTINUANCE OF TRIAL DATE.

Defendant, by his attorneys, Wettrick, Wettrick & Flood, now moves the Court for an order continuing the trial date herein, by reason of the illness of the defendant, and in order to afford reasonable and sufficient opportunity to the defendant to recover from his illness and prepare for his defense.

This motion is based upon the affidavits hereto attached and the files herein.

WETTRICK, WETTRICK & FLOOD,
Attorneys for Defendant. [29]

AFFIDAVIT.

State of Washington,
County of Spokane.—ss.

Conrad Wolfle, being first duly sworn, deposes and says:

That in the month of October, 1931, he was in the employ of the Idamont Gold Mining Company in Lewis and Clark County, State of Montana, as superintendent of their mining operations.

On the evening of October 16, 1931, a drunken brawl occurred at the bunk-house. Affiant went over to the bunk-house to see if he could quiet the disturbance and as affiant opened the door of the bunk-house one of the men struck him across the head with a heavy iron pipe.

That as a result of such blow affiant suffered severe concussion of the brain; that affiant was in the hospital in Helena, Montana, for a period of ten days and since that time has been at his home; that as a result of the injury then inflicted, affiant has impaired vision and is suffering from dizziness and very severe headaches; that affiant is unable to work and is unable to concentrate his attention

upon any matter for any length of time without bringing on severe and blinding headaches.

CONRAD WOLFLE.

Subscribed and sworn to before me this 14th day of December, 1931.

[Seal] DON F. KIZER,
Notary Public in and for the State of Washington, residing at Spokane. [30]

AFFIDAVIT.

State of Washington,
County of Spokane.—ss.

T. M. Ahlquist, being first duly sworn, deposes and says:

That he is a physician and surgeon duly authorized to practice medicine in the State of Washington and resides at Spokane therein;

That one Conrad Wolfle has been under his care for some time, suffering the after effects of concussion of the brain;

That at the present time said Wolfle is suffering from impaired vision and complains of severe headaches and tests indicate quite a degree of lack of coordination.

There can be no doubt that the injury inflicted upon said Wolfle has had a serious effect upon his health and that he will be unable at the present time, or for some time to come, to concentrate his attention upon any serious matter for any length of time.

T. MAURICE AHLQUIST.

Subscribed and sworn to before me this 14th day of December, 1931.

[Seal] DON F. KIZER,
Notary Public in and for the State of Washington, residing at Spokane.

Received a copy of the within motion this 18th day of Dec., 1931.

ANTHONY SAVAGE,
Attorney for Plaintiff.
M. P.

[Endorsed]: Filed Dec. 21, 1931. Ed. M. Lakin. Clerk. [31]

AFFIDAVIT OPPOSING CONTINUANCE.

State of Washington,
County of King.—ss.

George E. Moser, being first duly sworn, deposes and says:

I am a United States Post Office Inspector assigned jointly with Inspector J. S. Swenson for investigation of the case involving Conrad Wolfle, on the charge of using the United States mails in furtherance of a scheme to defraud.

On Thursday, December 17, 1931, I called the home of the said Conrad Wolfle by telephone at Spokane, Washington, about 9:00 A. M. and asked whether Mr. Wolfle was at home. His wife replied

that he was down town visiting his doctor. She promised to have him call me when he returned. No call had come by noon and I again called the house and was advised that he had not returned. About 2:30 P. M. I called a third time, when Mrs. Wolfle told me that her husband had gone to bed and that I would not be permitted to see him.

On Saturday, the 19th inst., I accompanied Dr. E. S. Jennings of Spokane to the home of Mr. Wolfle for a physical examination of the defendant, to ascertain whether he is in a condition to appear in court for trial in the pending case. We reached the house about 10:15 A. M. Mr. Wolfle was dressed and came to the door to admit us. Dr. Jennings made his examination and thereafter expressed to me the opinion was well able to attend the trial.

From my own observation of the defendant Wolfle during his examination by the doctor I came to the conclusion that he would be well able to attend the trial as scheduled; that he answered the doctor's questions very deliberately and cautiously and was plainly desirous of giving the doctor the impression that he was laboring under a strain. A scar on his forehead which he said had been caused by an injury sustained in a mine, was fully healed and there is no physical evidence of disability.

GEORGE E. MOSER.

Subscribed and sworn to before me, a deputy clerk of the United States District Court, at Seattle,

Washington, this twenty-first day of December, 1931.

[Seal] S. COOK,
Deputy Clerk, U. S. District Court,
Western District of Washington.

Copy Rec'd. Dec. 21/31.
WETTRICK, WETTRICK & FLOOD.

[Endorsed]: Filed Dec. 23, 1931. Ed. M. Lakin, Clerk. [32]

H. P. MARSHALL E. S. JENNINGS
DRS. MARSHALL and JENNINGS
424 Old National Bank Bldg.
Spokane, Washington

AFFIDAVIT OPPOSING CONTINUANCE.

State of Washington,
County of Spokane.—ss.

E. S. Jennings being first duly sworn upon oath depose and say:

Dr. E. E. Jennings is a physician and surgeon with offices at 424 Old National Bank Building, Spokane, Washington, who made an examination of Mr. Conrad Wolfle, December 19, 1931 and reports the following:

HISTORY. This is a well preserved man age 60. He claims that he was struck on the forehead on October 16, 1931; that he was rendered momentarily unconscious; and that he sustained a loss

of an excessive amount of blood. He was immediately given first aid treatment and that night taken to the hospital where he spent ten days. At the expiration of his stay in the hospital he returned to Spokane and consulted Dr. John Semple. He states that Dr. Semple explained to him the numerous possibilities such as headache, loss of memory, etc. which are in some instances sequelae of head injuries.

He further states that he later consulted his family physician, Dr. T. M. Ahlquist, complaining of headache and inability to concentrate. He claims these symptoms are now present and have been present intermittently since the time of his injury October 16, 1931. He complains of failing vision in the left eye. He claims to have had nose bleed during the night since leaving the hospital. He was told that the X-ray plates taken while in the hospital showed no skull fracture.

PHYSICAL EXAMINATION. He has a small healed scar on the left forehead and a beginning cataract in the left eye which accounts for his loss of vision in the left eye. Reaction of pupil to light and accommodation is normal; heart and lungs are negative; abdomen negative; blood pressure, systolic 142; diastolic 84; pulse 98; all reflexes normal; no Romberg and no Argyll Robertson's pupil.

CONCLUSION. In my opinion for a man of 60 years of age this man is in excellent physical condition. All his symptoms are subjective and all his

complaints are possibly true. However, he has been well coached in the symptoms that may occur following an injury such as he has sustained. He is intelligent enough to take advantage of this knowledge. In my opinion if brought to trial he would sustain no material injury.

E. S. JENNINGS, M. D.

Subscribed and sworn to before me this 19th day of December, 1931.

[Seal] G. M. FERRIS,
Notary Public in and for the State of Washington, residing at Spokane.

Service acknowledged. Dec. 21/31.
WETTRICK, WETTRICK & FLOOD,

[Endorsed]: Filed Dec. 23, 1931. Ed. M. Lakin, Clerk. [33]

[Title of Court and Cause.]

AFFIDAVIT OF TOM DeWOLFE IN OPPOSITION TO DEFENDANT'S MOTION FOR CONTINUANCE.

United States of America,
Western District of Washington,
Northern Division.—ss.

Tom DeWolfe, being first duly sworn, on oath deposes and says:

That he is an Assistant United States Attorney for the Western District of Washington, and as

such makes this affidavit for and on behalf of the plaintiff herein.

That indictment in the instant cause was returned against the defendant, April 2, 1931; that defendant's motion for continuance which was filed and served on the 18th day of December, 1931, is the fourth motion for continuance of the trial date which he has filed and served herein.

That affiant is informed and verily believes as follows: That defendant and his attorneys of record herein have been aware of the investigation carried on by Post Office Inspectors affecting the Cantu Mining Company and the connections therewith of the defendant, Conrad Wolfle, and that said defendant has had ample time for preparation of his defense; that on August 22, 1930, the defendant, Wolfle, was interviewed at length in the office of the Post Office Inspector-in-Charge at Seattle, at which time he was fully advised as to the charges which have been made against him by investors of his company, and that a prosecution would likely follow; again the defendant was interviewed by Post Office Inspector J. S. Swenson at Spokane, Washington, on October 8th and 9th, 1930, at which time the [34] defendant begged the said Inspector not to cause the said indictment or to start the prosecution before the end of the year stating at that time that he would ask no further delay.

That witnesses had already been subpoenaed to appear before the grand jury convened October 14,

1930, to present evidence against this defendant in an effort to secure his indictment, but at the urgent requests of the defendant and his attorney, Fred J. Wettrick, the witnesses were dismissed and presentment of the case to the grand jury was postponed.

Another grand jury convened December 17, 1930, and the case was again continued because of appeals for further delay by the defendant, his excuse being at that time, as on all occasions, that he was negotiating for financial assistance in the east. The case was again passed for the same reason at the time of the session of the grand jury of February 18, 1931. The indictment was finally returned by the grand jury convened April 1, 1931.

After notice to the defense attorneys that the case would be set down for trial within a reasonable time after the return of the indictment, Hon. George M. Bourquin set the case for trial on May 20, 1931. Later Fred J. Wettrick, attorney for defendant, appeared and moved for a continuance on the ground that the defendant was still in New York carrying on negotiations affecting the Cantu Mining Company. The government did not object at that time to continuing the case until June 23, 1931. At the time the case was set for trial on June 23, 1931, the defense attorney, Fred J. Wettrick, made no protest to the Court.

That the defendant has had ample time for preparation of the trial of this cause as will be shown by his other motions and affidavits for continuance previously filed herein on the [35] ground that he was then ill and needed further time to prepare for the trial of this case; that a continuance of the trial of this cause in August, 1931, was granted due to an operation for appendicitis performed on the said defendant by P. M. Ahlquist, M. D., physician and surgeon of Spokane, Washington; that more than fifty subpoenas have been issued by the Clerk of the Court for the above entitled district for the attendance of witnesses here at the trial of the above entitled cause on January 12, 1932; that the government has expended a substantial sum of money in preparation for the trial of this cause on the date it has been set for trial, expenses have been incurred in the subpoena of witnesses and the making of arrangements for the attendance of witnesses, as aforesaid, in the trial of the above entitled cause on January 12, 1932; that this is the third time in which witnesses have been subpoenaed on behalf of the government in the above entitled cause, at which time approximately fifty witnesses subpoenaed and wires or personal notification were of necessity sent to the witnesses ordering them not to appear for trial; that the government has suffered considerable expense by the dilatory tactics of the defendant in relation to his frequent demands for continuance.

That the present motion and affidavit for continuance which were served and filed on December 18, 1931, are inadequate and were served and filed untimely in that this cause was set for trial on November 16, 1931, and at that time counsel for the defendant made no mention to the Court of the illness, if any, of the defendant as allegedly set forth in the affidavit in support of his motion for continuance filed December 18, 1931, and stated to the Court that he would rather have the case tried January 19th, but did not state that the defendant, Wolfle, was ill and gave every assurance to the government counsel that no [36] further continuance of the trial date would be requested as had been the case in the past; that affiant who is in charge of the prosecution of this case in behalf of the United States had no inkling or idea that further continuance would be requested by defendant until approximately on the 16th day of December, 1931, when counsel for the defendant advised affiant that he was intending to file a motion for continuance, which motion was not filed until December 18, 1931, as aforesaid; that between the date of November 16, 1931, when the case was set for trial, on January 12, 1932, and the date of this affidavit the government, not being mindful of the fact that the defendant intended to wait until a late date before filing his motion for continuance, made arrangements for the trial of this cause and the subpoenaing of witnesses as aforesaid.

Wherefore, affiant prays that the above entitled cause not be continued, but that the same be tried on the date heretofore set, to-wit, January 12, 1932.

TOM DE WOLFE.

Subscribed and sworn to before me this 23rd day of December, 1931.

[Seal] S. COOK,

Deputy Clerk, U. S. District Court, Western District of Washington.

Copy Rec'd Dec. 21-31.

WETTRICK, WETTRICK & FLOOD.

[Endorsed]: Filed Dec. 23, 1931. Ed. M. Lahin, Clerk. [37]

[Title of Court and Cause.]

MEMORANDUM RULING AND ORDER OF MOTION OF DEFENDANT FOR A CONTINUANCE.

The defendant's motion has been submitted upon certain affidavits, depositions and the examination in open court of George E. Moser, Post Office Inspector.

The affidavits which have been considered by the Court are: One by the defendant and one by Dr. T. M. Ahlquist, both dated December 13th, 1931; an affidavit of Dr. E. S. Jennings dated December 19th, 1931; an affidavit of George E. Moser dated December 21st, 1931, and an affidavit of Tom De Wolfe dated December 23rd, 1931.

The depositions which have been considered by the Court are those of Doctors T. M. Ahlquist, D. H. Lewis and John H. O'Shea, all taken December 22nd, 1931.

Upon consideration of such affidavits, depositions and testimony the motion for a continuance is denied.

The Clerk is directed to immediately notify the United States Attorney and the attorney for the defendant of this ruling and order.

Signed at Tacoma, Washington, this 24th day of December, 1931.

EDWARD E. CUSHMAN;
Judge.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Dec. 24, 1931. Ed M. Lakin, Clerk.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division, Dec. 26, 1931. Ed. M. Lakin, Clerk. [38]

[Title of Court and Cause.]

EXCEPTION.

Comes now the defendant and excepts to the ruling and order of the Court on the motion of defendant for a continuance, upon which motion the Court rendered its memorandum ruling at Ta-

coma, Washington, on the 24th day of December, 1931.

WETTRICK, WETTRICK & FLOOD,
H. SYLVESTER GARVIN,
Attorneys for Defendant.

The foregoing exception is hereby allowed.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: Filed Jan. 8, 1932. Ed. M. Lakin, Clerk. [39]

VERDICT.

District Court of the United States, Western District of Washington, Northern Division.

No. 41369

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CONRAD WOLFLE,
Defendant.

We, the jury in the above-entitled cause, find the defendant Conrad Wolfle is guilty as charged in Count I of the Indictment herein; and further find the defendant Conrad Wolfle is guilty as charged in Count II of the Indictment herein; and further find the defendant Conrad Wolfle is guilty as charged in Count III of the Indictment herein;

and further find the defendant Conrad Wolfle is guilty as charged in Count IV of the Indictment herein; and further find the defendant Conrad Wolfle not guilty as charged in Count VI of the Indictment herein.

A. E. CRONARD,
Foreman.

[Endorsed]: Filed Feb. 17, 1932. Ed. M. Lakin, Clerk. [40]

[Title of Court and Cause.]

MOTION IN ARREST OF JUDGMENT.

Comes now the defendant, Conrad Wolfle, and moves the Court to arrest the judgment and not pronounce the same in the above-entitled cause, for the following reasons, to-wit:

I.

That neither the indictment, nor any of the counts therein, charge any crime against this defendant.

This motion is based upon the files, records and proceedings herein.

WETTRICK, WETTRICK & FLOOD,
H. S. GARVIN,
Attorneys for Defendant.

Received a copy of the within motion this 19th day of March, 1932.

ANTHONY SAVAGE,
United States Attorney.

[Endorsed]: Filed Mar. 21, 1932. Ed. M. Lakin, Clerk. [41]

[Title of Court and Cause.]

MOTION FOR A NEW TRIAL.

Comes now the above-named defendant and moves the Court for an order granting to him a new trial in the above-entitled cause for the following reasons:

I.

Irregularity in the proceedings of the Court, jury and the plaintiff, and in the orders of the Court by which the defendant was prevented from having a fair trial.

II.

Misconduct of the plaintiff and jury.

III.

Accident and surprise which ordinary prudence could not have guarded against.

IV.

Insufficiency of the evidencet to justify the verdic of the jury, and that such verdict is against law.

V.

Error in law occurring to trial and excepted to at the time by defendant.

VI.

Error in overruling the demurrer of this defendant to the indictment, and to each count therein.

VII.

Error in overruling the motion to quash and denying [42] motion to make more definite and certain.

VIII.

That the verdict is contrary to the law of the case.

IX.

That the Court upon the trial admitted incompetent evidence offered by the United States.

X.

That the Court upon the trial excluded competent evidence offered by the defendant.

XI.

That the Court improperly instructed the jury to the defendant's prejudice.

XII.

That the Court improperly refused, to defendant's prejudice, to give correct instructions tendered by the defendant.

XIII.

The Court erred in refusing to direct a verdict of not guilty at the close of the Government's case.

XIV.

The Court erred in refusing to direct a verdict of not guilty at the close of all the evidence.

This motion is based upon the files, records and proceedings herein.

WETTRICK, WETTRICK & FLOOD,
H. S. GARVIN,

Attorneys for Defendant.

Received a copy of the within motion for new trial this 19th day of March, 1932.

ANTHONY SAVAGE,
United States Attorney.

[Endorsed]: Filed Mch. 21, 1932. Ed. M. Lakin, Clerk. [43]

[Title of Court and Cause.]

HEARING ON MOTION IN ARREST OF JUDGMENT AND FOR NEW TRIAL.

Now on this 21st day of March, 1932, Anthony Savage, United States District Attorney and Tom DeWolfe, Assistant United States District Attorney, appearing for the government and F. J. Wettrick, Esq. and Geo. E. Flood, Esq., appearing as counsel for the defendant, the defendant's motion in arrest of judgment and motion for new trial is presented by Geo. E. Flood, Esq., of counsel for the defendant. Each motion is denied and exceptions are allowed.

Journal No. 20 at page 281. [44]

[Title of Court and Cause.]

SENTENCE.

Comes now on this 21st day of March, 1932, the said defendant, Conrad Wolfle, into open Court for sentence and being informed by the Court of the charges herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him and he nothing says save as he before hath said. Wherefore, by reason of the law and the premises it is ordered, adjudged and decreed that the defendant is guilty of violation of Section 215 Penal Code as charged in counts 1, 2, 3, and 4 of the indictment and that said defendant be punished by being imprisoned for a term of four (4) years on each of the four counts, said imprisonment to run concurrently and not consecutively. The place of imprisonment to be at the United States Penitentiary at McNeil Island, Washington, or until such time as the Attorney General of the United States may designate some other place as the place of imprisonment. It is further ordered, adjudged and decreed that the defendant pay to the United States a fine in the sum of $250.00 on each count and that said defendant be further imprisoned until the said fine shall have been paid or he be otherwise discharged by law. And it is the further judgment of the Court that said defendant pay the taxable costs of prosecution herein. It is further ordered, adjudged and decreed that the defendant be com-

mitted to the custody of the Attorney General of the United States and the Warden of the United States Penitentiary at McNeil Island, Washington, his authorized representative. And the defendant is remanded to the custody of the United States Marshal for delivery to the Warden of the United States Penitentiary at McNeil Island, Washington.

Judgment and Decree Volume 7, at page 554.
[45]

[Title of Court and Cause.]

ORDER EXTENDING THE TIME TO AND INCLUDING JUNE 20TH, 1932, FOR LODGING AND FILING THE BILL OF EXCEPTIONS HEREIN AND EXTENDING THE TERM OF COURT THEREFOR.

And now upon the stipulation of plaintiff and defendant, by their respective counsel, filed this day, that the defendant, Conrad Wolfle, may have an extension of time up to and including the 20th of June, 1932, within which to lodge and serve his bill of exceptions herein and that the present term of Court be deemed so extended,

NOW, THEREFORE, IT IS HEREBY ORDERED that the defendant, Conrad Wolfle, may hereby have an extension up to and including the 20th day of June, 1932, within which to lodge and serve his proposed bill of exceptions herein, and that the present term of Court and citation be and

hereby is extended for that length of time for that purpose.

Dated this 21st day of March, 1932.

EDWARD E. CUSHMAN,
United States District Judge.

Received a copy of the within order this ..... day of March, 1932.

Attorney for Plaintiff.

O. K.
TOM DE WOLFE,
Asst. U. S. Atty.

[Endorsed]: Filed Mar. 21, 1932. Ed. M. Lakin, Clerk. [46]

[Title of Court and Cause.]

PETITION FOR APPEAL.

Comes now the defendant, Conrad Wolfle, hereing, and having heretofore filed in the above-entitled cause his assignments of error, and hereby gives notice of appeal that he appeals to the Circuit Court of Appeals for the Ninth Circuit, from the judgment and sentence of this Court entered on the 21st day of March, 1932, based upon the verdict of the jury finding the defendant guilty on Counts I to IV as charged in the indictment, and the said defendant respectfully prays this Court that his appeal be allowed.

WETTRICK, WETTRICK & FLOOD,
H. S. GARVIN,
Attorneys for Defendant.

Received a copy of the within Petition for Appeal this 15th day of April, 1932.

TOM DE WOLFE,
Asst. United States Attorney.

[Endorsed]: Filed Apr. 16, 1932. Ed. M. Lakin, Clerk. [47]

[Title of Court and Cause.]

NOTICE OF APPEAL.

To the United States of America, Plaintiff, and to Anthony Savage, United States District Attorney, and to Tom DeWolfe, His Assistant:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the defendant, Conrad Wolfle, above named, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment, sentence and order entered in the above-entitled cause on the 21st day of March, 1932, and that the certified transcript of record will be filed in the said Appellate Court within the time provided by law.

WETTRICK, WETTRICK & FLOOD,
Attorneys for Defendant.

Copy received this 15th day of April, 1932.

TOM DE WOLFE,
Asst. U. S. Atty.

[Endorsed]: Filed Apr. 16, 1932. Ed. M. Lakin, Clerk. [48]

[Title of Court and Cause.]

ASSIGNMENTS OF ERROR.

Comes now the defendant, Conrad Wolfle, in the above-entitled cause, and in connection with his appeal and petition for appeal in this cause, submitted and filed herewith, assigns the following errors which said defendant avers and says occurred in the proceedings and trial of the above-entitled cause and in the above-entitled Court, and upon which he relies to reverse, set aside and correct the judgment and sentence herein entered, and says that there is manifest error appearing upon the face of the record and in the proceedings, in this:

I.

The Court erred in overruling the demurrer to the indictment.

II.

The Court erred in refusing to quash the indictment.

III.

The Court erred in denying the motion to make more definite and certain, or in the alternative to strike.

IV.

The Court erred in denying the defendant's motion of December 18, 1931, decided by the Court on December 24, 1931, for a continuance of the

trial of the above-entitled cause, which motion was made by reason of defendant's illness and physical inability to prepare for and to stand trial. [49]

V.

The Court erred in denying the motion of the defendant made during the course of the trial on or about the 4th day of February, 1932, for a continuance of the trial of the above-entitled cause by reason of the defendant's illness and inability to stand trial or to testify in his own behalf.

VI.

The Court erred in admitting in evidence Exhibit No. 99, the same being a letter written by defendant to a certain Lena Hartigan, she not being personally present or a witness in the cause, and the letter offered upon the purported identification of Witness Kimball, which exhibit purports to contain certain representations made by defendant Wolfle.

VII.

The Court erred in rejecting defendant's Exhibit A—which exhibit was a bulletin of the U. S. Geological Survey published in 1914 pursuant to law, containing data establishing the success of the United Copper Mine under the supervision and management of defendant Conrad Wolfle.

VIII.

The Court erred in admitting in evidence the testimony of the plaintiff's witness, Grace Snyder, to the effect that she was the secretary of the defendant, Conrad Wolfle, and that while acting as his stenographer she took stenographic notes of a letter dictated to her by defendant Conrad Wolfle which the said Conrad Wolfle wrote to his wife, Madeline Wolfle, in Spokane, Washington, and that her stenographic notes which she read and translated in the course of her testimony were in substance as follows:

That the defendant, Conrad Wolfle, was very pleased [50] to receive a letter from home and learn that his daughter Virginia had done so well in a musical recital and that he was very proud of his daughter Virginia. That he wished in this letter to reassure his wife of his physical condition and that he had had a thorough examination by his doctor, who found him in excellent health, fit and able to subsist upon a diet of cross-cut saws; that the doctor told him that his heart functioned normally and that he felt fine and was going to work hard to make the Cantu Mining enterprise a success. That he had met a banker friend of his formerly from Spokane, now in business in Seattle, who told him that Seattle was a hard town to break into, but that he (the defendant Wolfle) was going to break in and that when he did he would rob them all blind!

Which said letter the witness Snyder testified was dictated and signed by the defendant, Conrad Wolfle, and addressed and mailed to the defendant's wife in Spokane.

IX.

The Court erred in refusing the defendant's testimony offered to show that the dissatisfied stockholders were being refunded the purchase price of the stock paid by them, and the total amount refunded.

X.

The Court erred in admitting in evidence Exhibits 112, 115, 118 over the objection and the exception of the defendant herein, which said exhibits were the letters from Wolfle to Wade in New York City, written at a time and date subsequent to the indictment herein. [51]

XI.

The Court erred in instructing the jury as follows:

> "This does not mean that you have to be so convinced that the scheme to defraud included all of the false representations and promises described in the indictment, but you do have to be convinced beyond a reasonable doubt from the evidence before you can lawfully convict that the defendant devised or intended to devise a scheme or artifice to defraud by means

of at least one of the false representations or promises described in the indictment."

XII.

The Court erred in instructing the jury as follows:

"You are instructed that the defendant's belief that the Cantu property was of value would not justify inducing the purchase of stock in that company by fraudulent representations. Defendant's belief that the Cantu Mining Company would eventually develop and profitably operate a mine on its property, if it could secure the necessary capital, would not justify him in securing that capital from others by means of the false and fraudulent representations, or false and fraudulent promises, as for example: Such belief would not justify or excuse him in representing to such investors —if it be a fact that he did so represent,—that all of the money paid by investors for stock in the company would go to the treasury of the company for the development of the mining property if he well knew at the time of so representing that such money would neither go to the treasury of the company nor to the development of its property."

XIII.

The Court erred in instructing the jury as follows:

"That the defendant is not guilty in so far as any statements made by him were made in the honest belief that they were true, no matter how untrue in fact they were, and no matter how careless or credulous he had been in the belief that they were true. But the mere fact that someone had falsely represented to the defendant that which he in turn represented to the investors, would be no defense if the defendant knew it to be false at the time of making the representation to the investors. If one after hearing of the falsity of a representation, continues to make it, he cannot escape responsibility because he originally believed it to be true."

XIV.

The Court erred in instructing the jury as follows:

"You will not allow yourselves to be influenced [52] to the prejudice of the defendant by the statements, if any, made by the salesmen of the stock of the Cantu Mining Company, of which the defendant had no knowledge and in which he did not in any way cause them to make, or aid, abet, counsel, command, induce or procure the making."

XV.

The Court erred in instructing the jury as follows:

"You are required to decide the questions submitted to you—the truth of the charges against the defendant—upon the strong probabilities of the case, and the probabilities must be so strong as not necessarily to exclude all doubt and possibility of error, but to exclude all reasonable doubt."

XVI.

The Court erred in instructing the jury as follows:

"In determining whether the defendant caused the mailing of the particular letter described in the particular Count of the indictment being considered, you will take into account whatever the evidence shows as to the method used in carrying on the business with which the defendant was connected and the opportunity the defendant had to know those methods and what, if anything, the defendant had to do with the letter therein described before its mailing. Then, in determining whether the defendant caused it to be mailed, you have a right to give weight, in the absence of any rebutting evidence, to the presumption that every man is presumed to intend the natural consequences of his voluntary acts."

XVII.

The Court erred in instructing the jury as follows:

"You are instructed that there is a statute in the United States which in substance provides that not only is a person who directly commits an act made an offense by any law of the United States a principal offender, but any person who aids, abets, counsels, commands, produces or procures the commission of such an act is likewise a principal offender. To abet means to encourage, to incite—mere knowledge that another is committing an offense is not sufficient to make of one a principal offender."

XVIII.

The Court erred in instructing the jury as follows:

"While in a scheme to defraud it is necessary that the postoffice establishment be used as alleged. It is not necessary that the purpose to use the postoffice be a part of the scheme or plan. It is only [53] necessary to complete the offense that it be in fact used as alleged."

XIX.

The Court erred in instructing the jury as follows:

"The indictment alleges that the scheme to defraud was devised by the defendant prior to the 1st day of January, 1929. This allegation of the indictment is not a material obligation in that it has to be proven by evidence beyond

a reasonable doubt that it was actually devised by defendant prior to January 1, 1929."

XX.

The Court erred in instructing the jury as follows:

"You should not find the defendant guilty unless convinced beyond a reasonable doubt that one or more of the false pretenses, representations or promises described in the First Count of the indictment were a part of the scheme of the defendant to defraud, even though you are convinced by the evidence beyond a reasonable doubt that in furtherance of a scheme to defraud he made false representations and promises not described in the indictment, but you may consider other false representations and promises of the defendant, if any have been shown, of a similar character in determining his intent in making any of those described in the indictment which it has been shown by the evidence beyond a reasonable doubt he made."

XXI.

The Court erred in instructing the jury as follows:

"You will not by lot determine what your verdict should be, nor will you compromise or trade in reaching a verdict, nor submit to a verdict merely to end the case or to be with

the majority. But the fact that a majority of the jurors may be opposed to you should be carefully considered by you in determining whether or not a position taken by you may not after all be wrong."

XXII.

The Court erred in refusing to give to the jury defendant's requested instruction No. 11 reading as follows:

"A reasonable doubt in this connection is such a doubt as will cause reasonable, prudent and considerate men to hesitate or waver in the graver and more important concerns of human life before acting upon the truth of the matters charged or alleged. Such a doubt may arise from the evidence or from the lack of evidence. On the one hand you will not be moved or swayed by doubts [54] which are purely imaginary and capricious, and on the other hand you will not convict in the face of doubts which are real and substantial. If from a fair and candid consideration of all the testimony you can say upon your oaths as jurors that you have an abiding conviction of the truth of the charge to a moral certainty, then you have no reasonable doubt and should convict. If you have no such moral convictions, or if you entertain doubts for which sane and satisfactory reasons can be assigned in your own

minds, you must give the defendant the benefit of that doubt and find him not guilty."

XXIII.

The Court erred in refusing to give to the jury defendant's requested instruction No. 19, reading as follows:

"Mere knowledge, acquiescence or approval of the act, without cooperation or agreement to cooperate, is not enough to constitute one a party to a scheme to defraud. There must be intentional participation in the transaction with a view to the furtherance of the common design and purpose, as alleged in the indictment."

XXIV.

The Court erred in refusing to give to the jury defendant's requested instruction No. 21, reading as follows:

"You are instructed the defendant's intent is the determining factor in establishing whether the scheme or artifice defined by them was a scheme to obtain money or property by the use of false or fraudulent representations, pretenses or promises. A scheme conceived and pursued in good faith is not such a scheme."

XXV.

The Court erred in refusing to give to the jury defendant's requested instruction No. 22, reading as follows:

"You are instructed that if you find, or have a reasonable doubt that any letter or circular alleged to have been mailed in any count of the indictment was not mailed for the purpose of executing the artifice or scheme as charged in such count of the indictment, then I instruct you to return a verdict of not guilty on such count or counts."

XXVI.

The Court erred in refusing to give to the jury [55] defendant's requested instruction No. 23, reading as follows:

"You are instructed that the defendant in this action is not on trial for having received money or property from others through false or fraudulent representations, pretenses or promises—that is a matter that would not be within the jurisdiction of this court—but he is on trial for having devised, or intending to devise, a scheme or artifice to obtain goods or property by the use of false or fraudulent representations, pretenses or promises, and for having used the mails of the United States in the execution of such scheme or artifice."

XXVII.

The Court erred in refusing to give to the jury defendant's requested instruction No. 25, reading as follows:

"You are instructed that evidence of sales of stock by defendant has only been admitted for the purposes of tending to establish the existence of the scheme or artifice charged in the indictment, and the intent of the defendant; and you are not to convict the defendant on account of any such sales alone, for the reason that the defendant is not on trial for the fraudulent sale of stock or for obtaining money or property by false or fraudulent representations, pretenses or promises."

XXVIII.

The Court erred in refusing to give to the jury defendant's requested instruction No. 27, reading as follows:

"I instruct you that before you can find the defendant guilty, it must be established beyond a reasonable doubt by the evidence in this case that two things were done by him. It must appear, first, that the defendant devised a scheme or artifice, to defraud; second, that the defendant, for the purpose of executing such scheme or artifice to defraud, or attempting to do so, deposited, or caused to be deposited, in the Post Office of the United States for the purpose of having the same sent by the Post Office establishment of the United States, and in furtherance of the scheme, the letters and circulars mentioned, described and counted on in the several counts of the indictment before you.

In your deliberations keep steadily in view two questions: (1) Did the defendant devise the scheme set forth in the indictment with intent to defraud? (2) Did the defendant with intent to execute the scheme (if you find that he devised the scheme with intent to defraud) deposit or cause to be deposited in the United States mails, the letters, [56] circulars, etc., counted on in the indictment and if from all the evidence you find that either of these questions must be answered in the negative, then your verdict must be not guilty."

XXIX.

The Court erred in refusing to give to the jury defendant's requested instruction No. 28, reading as follows:

"You are instructed that it is not unlawful for the defendant to formulate a plan for organizing a corporation to purchase such a mining property as the Cantu, or to sell its stock and obtain money for the purpose of developing and operating such a mine. It is only when a plan so conceived is formulated with a fraudulent intent to defraud investors and to deprive them of their money or property through false pretenses or representations, that a plan comes within the condemnation of the statute."

XXX.

The Court erred in refusing to give to the jury defendant's requested instruction No. 29, reading as follows:

> "In connection with any testimony in this case tending to show that the defendant represented that the stock in Cantu Mining Company would be sold at fifty cents a share, later at seventy-five cents a share, and later at a dollar a share, and that it was planned later to list it on the stock exchange in Seattle and Vancouver, you are instructed that if, by reason of the investigation which the defendant made of the worth and the value of the Cantu mining properties and the data and information which he received concerning the said property, he believed that the Cantu mining properties had sufficient value to warrant the sale of stock at such prices, and that the stock did have and would have such value, or if you have reasonable doubt in your mind but that the defendant so believed, then I instruct you that you will find the defendant Not Guilty of any count of the indictment by reason of any representations made concerning the value of said stock."

XXXI.

The Court erred in refusing to give to the jury defendant's requested instruction No. 38, reading as follows:

"You are further instructed that, although you may find that the defendant Wolfle was guilty of negligence and carelessness, and that he merely assented [57] to the mailing of certain letters, pamphlets, or literature, admitted as evidence in this case, you are instructed that he is guilty of no crime under the Postal Act charged in this indictment. Under the statute upon which the criminal charges here are predicated, there must be some form of overt act by the defendant Wolfle, the doing or saying of something that either directly or indirectly contributes to the criminal act, some form of demonstration on his part that expresses affirmative action and not mere approval, silence or acquiescence, which is all that is implied in assent. To assent to an act implies neither contribution nor an expressed concurrence, it is merely a mental attitude, which, however culpable from a moral standpoint, does not constitute a crime, since the law cannot reach opinion or sentiment."

XXXII.

The Court erred in refusing to give to the jury defendant's requested instruction No. 45, reading as follows:

"You are further instructed in connection with certain evidence admitted in this case that if you find that the representations complained of, however, were not false in fact and were

only false as the result of a legal inference, only false as the result of implication, then in that event you are instructed that you must return a verdict in favor of the defendant."

XXXIII.

The Court erred in refusing to give to the jury defendant's requested instruction No. 50, reading as follows:

"If you find from the evidence in this case that certain specific letters were mailed to witnesses who have appeared in this trial and that these letters related solely to particular transactions that were not part of the general scheme as alleged in the indictment for the purpose of defrauding investors generally, then you are instructed that even though you find that this particular letter and transaction may have been dishonest in some way other than that alleged in the indictment, then in that event you must return a verdict of not guilty."

XXXIV.

The Court erred in refusing to give to the jury defendant's requested instruction No. 55, reading as follows: [58]

"You are instructed that if you find from the evidence in this case that letters were deposited in the United States mail that were or were not signed by the defendant Wolfle, that this does not create any presumption that

the defendant Wolfle mailed the letters or authorized the mailing of them, and this is true even though the signature of the defendant Wolfle may appear and be admitted in specific letters. You, of course, understand that the mailing of such letters may be proven either by direct or circumstantial evidence, but there must be clear and convincing evidence before you can convict the defendant, that the letter was either mailed by him or that he did some act or group of acts on which the fact that the accused mailed the letter or letters, or caused them to be mailed, can be hinged, and if you have a reasonable doubt upon this matter you must resolve that doubt in favor of the defendant and render a verdict of not guilty."

XXXV.

Thereafter, within the time limited by law and the order and rules of this court, said defendant moved for a new trial and for an arrest of judgment, which motions were by the court overruled and an exception allowed as to each of said motions, which ruling of the court the defendant now assigns as error.

XXXVI.

And the court thereafter entered judgment and sentence against said defendant, upon the verdict of guilty rendered upon said indictment, to which ruling and judgment and sentence the defendant

excepted, and now the defendant assigns as error that the court so entered judgment and sentence upon the verdict.

XXXVII.

The trial court erred in refusing to grant motion of defendant, Conrad Wolfie, for a directed verdict at the close of the Government's case. [59]

XXXVIII.

The trial court erred in refusing to grant motion of defendant, Conrad Wolfie, for a directed verdict at the close of all the evidence.

And as to each and every of said assignments of error, as aforesaid, the defendant says that at the time of making of the order or ruling of the court complained of the defendant duly excepted and was allowed an exception wherever the same appears in the record to the ruling and order of the court.

WETTRICK, WETTRICK & FLOOD,
H. S. GARVIN,
Attorneys for Defendant.

Copy received this 15th day of April, 1932.
TOM DE WOLFE,
Asst. United States Attorney.

[Endorsed]: Apr. 16, 1932. Ed. M. Lakin, Clerk.
[60]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

Upon the petition for appeal of the defendant Conrad Wolfle, the assignments of error having heretofore been filed by the said defendant, it is

ORDERED, that the appeal be and the same hereby is allowed.

Done in open Court this 16th day of April, 1932.

JEREMIAH NETERER,
United States District Judge.

[Endorsed]: Filed Apr. 16, 1932. Ed. M. Lakin, Clerk. [61]

[Title of Court and Cause.]

APPEAL AND BAIL BOND.

KNOW ALL MEN BY THESE PRESENTS, that I, Conrad Wolfle, as principal, and New Amsterdam Casualty Co., a corp., as surety, are held and firmly bound unto the United States of America, plaintiff herein, in the penal sum of $5,000.00, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of this bond is such that, whereas the said defendant was tried on the 11th day of

January, 1932, and sentenced March 21st, 1932, in the above-entitled cause as follows:

On Count	I	Four years	and	fine	$250.00
On Count	II	"	"	"	$250.00
On Count	III	"	"	"	$250.00
On Count	IV	"	"	"	$250.00

said sentences to run concurrently.

AND WHEREAS the said defendant has sued out an appeal from the sentence and judgment in said cause to the Circuit Court of Appeals of the United States for the Ninth Circuit, and whereas, the above-entitled court has fixed the defendant's bond, to stay execution of the judgment in said cause in the sum of $5,000.00,

NOW, THEREFORE, if the said defendant Conrad Wolfle shall diligently prosecute his said appeal, obey, abide by and [62] render himself amenable to all orders which said Appellate Court shall enter herein, and shall render himself amenable to and obey all process issued or ordered to be issued by said Appellate Court herein, and shall perform any judgment entered, and shall not leave the jurisdiction of this court without permission first granted and shall abide by and obey all orders entered by the District Court of the United States for the Western District of Washington, Northern Division, and shall, pursuant to any order issued by said District Court, surrender himself and obey and perform any judgment entered herein by the said Circuit Court of Appeals or the said District

Court, then this bond shall be void; otherwise remain in full force and effect.

Sealed with our seals and dated this 15th day of April, 1932.

CONRAD WOLFLE,

Principal.

[Seal] NEW AMSTERDAM CASUALTY CO.,

Surety.

By A. F. KEES,

Attorney in Fact.

Approved:

TOM DEWOLFE,

Asst. United States Attorney.

Approved:

NETERER,

United States Judge.

[Endorsed]: Filed Apr. 16, 1932. Ed. M. Lakin, Clerk. [63]

[Title of Court and Cause.]

ORDER EXTENDING TIME FOR LODGING AND FILING BILL OF EXCEPTIONS HEREIN AND EXTENDING THE TERM OF COURT THEREFORE, AND CITATION.

And now upon the stipulation of plaintiff and defendant, by their respective counsel, filed this day, that the defendant Conrad Wolfle may have an extension of time up to and including the 20th day of Sept., 1932, within which to lodge and file his bill of exceptions herein and that the present term of court and citation be so extended,

NOW, THEREFORE, IT IS HEREBY ORDERED that the defendant, Conrad Wolfle, may have up to and including the 20th day of September, 1932, within which to lodge and serve his proposed bill of exceptions herein, and that the November 1931 term of court and citation be and hereby is extended to and including Sept. 20, 1932, for such purpose.

Dated this 15th day of June, 1932.

EDWARD E. CUSHMAN,
United States District Judge.

[Endorsed]: Jun. 15, 1932. [64]

[Title of Court and Cause.]

ORDER EXTENDING TIME FOR SETTLING BILL OF EXCEPTIONS AND TERM OF COURT THEREFOR.

And now upon the stipulation of plaintiff and defendant, by their respective counsel, filed this day, that defendant Conrad Wolfle may have an extension of time up to and including the 3rd day of October, 1932, within which to settle his bill of exceptions herein and that the present term of Court be so extended,

NOW, THEREFORE, IT IS HEREBY ORDERED, that the defendant, Conrad Wolfle, may have up to and including the 3rd day of October, 1932, within which to lodge and present his proposed bill of exceptions herein, and that the November 1931 term of Court be and hereby is extended to and including October 3rd, 1932, for such purpose.

Dated this 20th day of September, 1932.

EDWARD E. CUSHMAN,
United States District Judge.

Received a copy of the within Order this 20th day of Sept., 1932.

ANTHONY SAVAGE,
Attorney for Plaintiff.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Sep. 20, 1932. Ed. M. Lakin, Clerk.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division, Sep. 21, 1932. Ed. M. Lakin, Clerk. [65]

[Title of Court and Cause.]

HEARING ON SETTLEMENT OF BILL OF EXCEPTIONS.

Now on this 3rd day of October, 1932, Tom De Wolfe, Assistant United States District Attorney, appearing for the plaintiff and Attorneys Flood and Garvin appearing for the defendant, this cause comes on for settling bill of exceptions and the same is discussed pro and con with counsel for the government objecting to the bill. Whereupon said matter is continued over two weeks for the government to present further law or lodge proposed amendments. [66]

[Title of Court and Cause.]

PROPOSED BILL OF EXCEPTIONS.

BE IT REMEMBERED that heretofore, on the 12th day of January, 1932, the above-entitled cause came regularly on for trial in the above-entitled Court, before the Honorable Edward E. Cushman, one of the Judges of said Court, sitting with a jury at Seattle, Washington. The plaintiff appeared by Anthony Savage, United States District Attorney, and Tom DeWolfe, Assistant United States Attorney. The defendant appeared by Wet-

trick, Wettrick & Flood and H. Sylvester Garvin, his attorneys. A jury having been impaneled and sworn, and an opening statement made on behalf of the plaintiff by the District Attorney, the opening statement on behalf of the defendant having been reserved, and thereupon the following proceedings were had and tesimony taken during the course of said trial, to-wit: [67]

TESTIMONY OF GEORGE H. KIMBALL FOR THE PLAINTIFF.

GEORGE H. KIMBALL,

a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination
by Mr. DE WOLFE.

Q. Who is Mrs. Lena Hardigan?

A. Mrs. Lena Hardigan is a friend of mine; she is an old lady probably about 67 years old.

Mr. GARVIN.—Now, if Your Honor please, there is no question before the witness.

The COURT.—Sustained.

Mr. GARVIN.—I move it be stricken.

The COURT.—The last statement regarding the age of Mrs. Hardigan, will be stricken and the jury are instructed to disregard it.

Q. Did you talk to her about this stock?

A. I did.

(Testimony of George H. Kimball.)

Q. Do you know the defendant, Wolfle's, signature?

A. I do.

Q. (indicating). Is that his signature? On Exhibit 99?

A. Yes.

Mr. DEWOLFE.—I offer Exhibit 99 in evidence.

Mr. GARVIN.—It is objected to as incompetent, immaterial, not binding upon this defendant. There is no showing [68] the letter was mailed at the request of the defendant or by or under his authority or that it was ever mailed.

The COURT.—The objection is overruled. Is this a count letter?

Mr. DEWOLFE.—No, Your Honor.

Mr. GARVIN.—Exception.

The COURT.—Allowed. It will be admitted.

Government's Exhibit No. 99, the letter last above referred to, admitted in evidence and made a part of the record herein.

Mr. DEWOLFE.—(Reads Government's Exhibit 99 to the Jury.)

Q. Did you get any dividends on your stock?

A. No, sir.

Mr. GARVIN.—There are other marks on there.

Mr. DEWOLFE.—Sure.

Mr. GARVIN.—Read them (referring to exhibit).

Mr. DEWOLFE.—(Concludes reading of Exhibit 99.)

(Testimony of George H. Kimball.)

Q. Will you state whether or not you received any dividends?

A. I did not.

Mr. DEWOLFE.—That is all. [69]

TESTIMONY OF GRACE SNYDER, FOR THE PLAINTIFF.

GRACE SNYDER,

a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Mr. SAVAGE.—If Your Honor please, the Government desires to make an offer of proof and, in order to not prejudice the defendant, I think it should be made in the absence of the jury. We have this witness and Mr. Swenson. I think we can complete by noon—I think we can get through by that time, if your Honor passes upon it prior to 12:00 o'clock.

The COURT.—There is no necessity to take the jury out now and bring them back.

Mr. SAVAGE.—We can put Mr. Swenson on now and Mrs. Snyder on as the last witness. I think that would be more convenient.

(Mr. Swenson is put on the stand and the cross-examination is interrupted as follows):

The COURT.—The trial will be interrupted at this point, except as to the offer of proof on the

(Testimony of Grace Snyder.)

part of the prosecution. The jury is excused until 2:00 o'clock.

(Admonition.)

(The following in the absence of the jury.)

The COURT.—Have the jurors all left the room, Mr. Rock?

Bailiff ROCK.—Yes, Your Honor.

The COURT.—You may proceed.

Mr. DEWOLFE.—Your Honor, we offer to prove by Mrs. Snyder that between the 14th and 15th of June, 1929, the defendant dictated to her a letter to his wife. We offer to show this by her shorthand notes, taken at the time of the dictation; and, we offer to show also the letter was transmitted in the usual course to the wife by the stenographer.

The COURT.—Any objection? [70]

Mr. DEWOLFE.—And I have here (indicating) a copy of what the shorthand notes will set forth, and is offered as an admission and to show the state of mind and intent, if any, the defendant had.

The COURT.—I still understand the offer to show it by Mrs. Snyder, you are not offering to show it by that transcript? Is there any objection?

Mr. GARVIN.—May we look at the letter, if Your Honor please, first?

The COURT.—That would seem to be the shorter course to pursue, because your offer, up to this time has just been—not to offer he said any particular thing, just he wrote his wife?

(Testimony of Grace Snyder.)

Mr. DEWOLFE.—In connection with the offer, I would like to read to Your Honor this letter and assure Your Honor that we will show by the testimony of Mrs. Snyder, that the letter was to this effect, taken from her notes made at the time (reading): "To Mrs. Wolfle, 738 East 23d Avenue, Spokane. Dear Madeline: I received your letter and the newspaper clippings and I was also pleased to see the program of Virginia's little party; it was very good; I am proud of Virginia. I suppose you want to know whom I have for a Doctor and what he is doing. He is a young fellow by the name of 'Ash'—he studied at Mayo's in Rochester for many years; I rather like the chap; he is clean and good; seems to know his business and is right up to the minute. After examining and photographing and every other darn thing for five or six weeks, this is what he told me today:

"He showed me all the pictures and properties of my heart and blood pressure and everything. Nothing wrong. My stomach is as good as ever; I can eat cross-cut saws, but he tells me to eat more of mornings and very little of evenings; kind of divide up the three meals a day. My blood pressure is absolutely [71] perfect; he also tells me I have lived a very clean life.

"They took a test of my blood and everything else; my heart action is slow, due to the fact that I am very nervous. There seems to be four parts in the heart, two upper and two lower parts, and

(Testimony of Grace Snyder.)

the nerve centers between these parts are what they call 'Eagle eyes' and by looking at the chart, you can see where, on the left side, it works first just like a pump, then instead of shooting right through to the right side, it holds it; before the pressure gets on the right side of the heart, it forces the blood through the systoles.

"Now, he has given me some dope today, the first time—take a little every day and he is going to watch; he said the finest thing to do was to go away and leave business, take a long rest and watch my diet and not overeat and says I will be good for another forty years. I told him 'All right, you leave your business and I will leave mine and we will go away together.' He says he cannot do it; I says 'I cannot, either'—so, I will stay on the job, because this Cantu Mine, by God, has to be financed. It has been going very slow but we are all working and we are going to succeed. I talked to a banker the other day; he said 'You have done as much as most people do in two years.' He says 'It is a hard time to break in,' but I am going to break in and whenever I do, I am going to rob every last one of them blind, you bet your last bottom dollar. As ever——"

The COURT.—Any objection?

Mr. GARVIN.—We object to it as incompetent, irrelevant and immaterial, not made in pursuance to any plan; confidential, not within the confines of the charge as set forth in the indictment.

(Testimony of Grace Snyder.)

The COURT.—The objection is overruled. He will be allowed to show that, if he can. [72]

Anything further before the Court recesses? If not, Court will be adjourned until 2:00 o'clock this afternoon.

(Adjournment.)

Tuesday Afternoon, January 26th, 1932.

The COURT.—Is the call of the jury waived?

COUNSEL.—Yes, Your Honor.

The COURT.—Let the record show the jurors are all present. Call your next witness.

Mr. DEWOLFE.—Your Honor, I would like to call Mrs. Snyder and interrupt the cross-examination of Mr. Swenson, due to the fact that she is employed in a law office here and it will help her out if she is called at this time.

The COURT.—If there is no objection, you may do so.

GRACE SNYDER, recalled.

Direct Examination
by Mr. DeWolfe.

Q. I hand you, for your use, Mrs. Snyder, Government's exhibit marked 105 for identification, and ask you to state what that book is?

A. It is a stenographer's note book.

(Testimony of Grace Snyder.)

Q. Whose notebook?

A. Mine.

Q. Did the defendant dictate a letter to you to his wife about June 15th, 1929?

A. Yes. [73]

Q. Did you take the letter down in shorthand?

A. I did.

Q. Make the notes at the time?

A. Yes.

Q. Read the letter; read it out loud.

Mr. GARVIN.—It is objected to, if Your Honor please, as incompetent, and immaterial, not within the issues of the trial and it is a privileged communication between the husband and wife, and that it is in violation of the State's Statute, of Washington, Remington & Ballinger's Statute, 1214—that it is immaterial, that it brings in a collateral issue and is not within any of the issues alleged in the indictment; and for the additional reason, there is no proper foundation, and that it is secondary evidence.

The COURT.—Objection overruled.

Mr. GARVIN.—Exception.

The COURT.—Allowed. You will understand that you are asked to state just what the defendant said to you, as you can show by your notes, not anything that you furnished, if anything, that he did not say to you.

Q. Read it out loud, Mrs. Snyder, so we can hear it 'way back here.'

(Testimony of Grace Snyder.)

A. (reading from notebook). "Mrs. Wolfle, 738 East 23d Avenue." (I did not put Spokane, because I know Spokane.)

Mr. Wettrick. What is that? I did not hear that remark?

A. I did not have Spokane down here; I knew it was Spokane. (Continued reading.) "Dear Madeline: I received your letter and the newspaper clippings and I was also pleased to receive the little program of Virginia's little party. It was very good. I am very proud of Virginia. Now, I suppose you want to know——" [74]

Q. (interrupting). Louder.

A. (continuing). "——whom I have for a Doctor and what he is doing. He is a rather young fellow by the name of 'Ash.' He studied at Mayo's in Rochester for many years; I rather like the chap; he is clean and good; seems to know his business and is right up to the minute. After examining and photographing and every other darn thing for five or six weeks, this is what he told me today:

"He showed me all the pictures and properties of my heart and blood pressure and everything. Nothing wrong. My stomach is as good as ever; I can eat cross-cut saws, but he tells me to eat more of mornings and very little of evenings; kind of divided up the three meals a day. My blood pressure is absolutely perfect; he also tells me I have lived a very clean life.

(Testimony of Grace Snyder.)

"They took a test of my blood and everything else; my heart action is slow, due to the fact that I am very nervous. There seems to be four parts in the heart, two upper and two lower parts, and the nerve centers between these parts are what they call 'Eagle eyes' and by looking at the chart, you can see where, on the left side, it works first just like a pump, then instead of shooting right through to the right side, it holds it; before the pressure gets on the right side of the heart, it forces the blood through the systoles.

"Now, he has given me some dope today, the first time—take a little every day and he is going to watch; he said the finest thing to do was to go away and leave business, take a long rest and watch my diet and not overeat and says. I will be good for another forty years. I told him 'All right, you leave your business and I will leave mine and we will go away together.' He said he cannot do it; I says 'I cannot, either''— [75] so, I will stay on the job, because this Cantu Mine, by God, has to be finished. It has been going very slow but we are all working and we are going to succeed. I talked to a banker the other day; he said 'You have done as much as most people do in two years.' He said 'It is a hard time to break in' but I am going to break in and whenever I do, I am going to rob every last one of them blind, you bet your last bottom dollar. Yours as ever."

(Testimony of Grace Snyder.)

Mr. GARVIN.—The defendant moves this letter be stricken and the jury instructed to disregard it.

The COURT.—Motion denied.

Mr. GARVIN.—Exception.

The COURT.—Allowed.

Mr. DEWOLFE.—That is all.

Cross-examination
by Mr. Wettrick.

Q. What system of shorthand do you write?

A. Barnes—Pitman.

Q. And, you did not give the date of the letter?

A. I did not what?

Q. You did not mention the date of the letter?

A. The nearest date is the 15th, I find back a few pages, the 15th of June, 1929.

Q. 15th of what?

A. June.

Q. What is the date of the letter immediately preceding it?

A. There are several letters, quite a few before, I find that date preceding it.

Q. I am asking you what is the date of the letters?

A. That is one date—(searching through book) —June 15th, 1929. [76]

Q. Will you point out to me—let me see now, where is this letter you speak of?

(Testimony of Grace Snyder.)

A. Right here (indicating) "738 East 23d"—that is in figures.

Q. You are turning now four or five pages?

A. Yes.

Q. Six, seven, eight?

A. Until I find June 15th, it is back farther than that. (Searching through book.) June 4th—yes, June 4th.

Q. June 4th?

A. Yes.

Q. That is the next earliest date you have in the book?

A. Yes.

Q. And to whom was the letter of June 4th addressed?

A. There are a number of June 4th.

Q. Let's take the first one.

The COURT.—The first one, turning backward?

Q. The first letter on June 4th. She has dated June 4th.

A. J. Lester Maclin, Henry Building, Spokane, Washington.

Q. What is the date of the letter subsequent to the one that you read and show me that date? Before you do that,—you turned back about twenty pages, did you, before you found the date, June 4th?

A. I don't know how many.

Q. And was there no work done between June 4th and the 15th, except that which was done on

(Testimony of Grace Snyder.)

June 4th? In other words, Mrs. Snyder, were all those letters written on June 4th you have?

A. I don't know.

Q. You keep the dates on your letters?

A. Not each one. I put a date at the beginning of the day.

Q. That is the only date you have there?

A. Yes, that is the only date I have there. [77]

Q. Then you would say you wrote no letters between June 4th and 15th?

A. No, sir; I said June 15th—I was thinking this was on the 15th "Mrs. Madeline Wolfle" but this date is the only date before I find the next day preceding it is June 4th.

Q. What is the date of the letter you read?

A. I said June 4th is the only date preceding it.

Q. What is the date of the letter you read?

A. I don't know;—might have been a date—I did not put the date down; that was not my habit.

Q. In this particular date, it was what you did?

A. I don't know; it has been two years; I don't remember.

Q. That is exactly true. Do you find the date there?

A. June 4th is the only date I find before this letter.

Q. Between June 4th and the next date you have there are some 15 or 20 letters?

A. I have not counted them; there are quite a few.

(Testimony of Grace Snyder.)

Q. Now, what is the date? What is the next date you have in there and how many pages do you have to turn over to find the next date?

A. There must be another book; this is the beginning of book, May 23d—the next date is in the other book, my other shorthand book.

Q. Then you have only two dates in that book?

A. I have not looked; some days, I took lots of letters; some days, I did not take any.

Q. You have only two dates in that book?

A. I have not looked from the beginning.

Q. Didn't you look from the beginning.

A. I looked through the back; that was the front.

Q. Look through the back, also, please. [78]

A. Just a minute. (Searching through book.) No, sir; I find another date, May 23d, May 27th, 1929.

Q. What is the longhand that you see in there? Is that also dictation?

A. Yes.

Q. Are you in the habit of writing longhand and the Barnes-Pitman system interchangeably?

A. No, sir, that is a paragraph—looking to see how it would look before advertising.

Q. You put down?

A. No.

Q. Whose?

A. Mr. Wolfle.

Q. You put down?

(Testimony of Grace Snyder.)

A. No, sir; that is my writing.

Q. Also, find another date?

A. (Witness searches through the book.)

Q. The page you just turned over, you had a letter dictated by Mr. Cook; is that also dictated by Mr. Wolfle?

A. That is Mr. Wolfle's nephew.

Q. That is not dictated by Mr. Wolfle?

A. No, sir, I wrote there "dictated by Mr. Cook."

Q. Those are all the dates you find?

A. Yes, so far.

Q. Now, where was this notebook since you left the office?

A. At my home.

Q. At your home?

A. Yes.

Q. And when did you reread these notes last?

A. I don't remember; they have been—I don't remember; it was a long time ago, when I was instructed to go through those. [79]

Q. And you then furnished the information by reading these?

A. Yes.

Q. And when did you next see this book?

A. When I got them out of storage some time ago—I don't remember just what day.

Q. Out of your home?

A. Out of the basement, yes.

(Testimony of Grace Snyder.)

Q. And you have had them about a year and a half?

A. Something like that.

Q. During all of the time—you use these stenographic notebooks quite frequently?

A. That type?

Q. Yes.

A. I am not using that now.

Q. This is the only time you used this type?

A. You mean, shape and style?

Q. This notebook?

A. I used different kinds.

Q. You never used this any other place?

A. No, I never did use it any other place; I filled it in the office.

Q. Similar to this? You never used any place else?

A. I don't remember.

Q. You had these a year and a half at your home?

A. Yes.

Q. And, all this time, you were voluntarily going down to Mr. Swenson's office and giving him suggestions down there, is that not right?

A. No, sir.

Q. You say you never voluntarily?

A. No, sir; I said all this time, I have not; I have been too busy. [80]

Q. Within the last year and a half, since you had had the book?

(Testimony of Grace Snyder.)

A. In the early part of that time,—I have not been there for months and months.

Q. Early part of that time you went to Mr. Swanson's office frequently?

A. Yes, I was called.

Q. Voluntarily, too?

A. No, sir, except in answer to things I was supposed to get.

Q. You never went voluntarily?

A. No, sir.

Q. If Mr. Swanson said you did, that is not correct?

Mr. SAVAGE.—That is not proper cross-examination.

The COURT.—Sustained.

Q. And when did you transcribe the notes in the book?

A. I don't remember.

Q. For Mr. Swenson?

A. I did that some time last week.

Q. Last week?

A. Yes.

Q. And had you previously read it to Mr. Swenson?

A. Yes.

Q. You had taken the book down from your home to Mr. Swenson's office and read it to him?

A. No, sir, I don't remember; I don't know when I left the office and went by or when I took

(Testimony of Grace Snyder.)

the books home, I don't remember, it is too long ago.

Q. Didn't you take the books home immediately after the office closed in April 1930?

A. I don't know whether I took them home immediately or whether the Committee had them; I can't swear to it, when I took them home, Mr. Wettrick. [81]

Q. Then, you had them in your basement or your home for quite awhile?

A. Yes.

Q. Then, when did you tell Mr. Swenson about the contents in these private note books?

A. That one, I told him, as I said while ago, along early after the office was closed; I don't remember when it was.

Q. Then, having told him that, you took the book home again?

A. I had the books in a pile.

Q. You took them home again then?

A. Yes.

Q. And did you transcribe it for Mr. Swenson at that time?

A. I don't remember.

Q. Didn't you just transcribe it at home and take it down to him and say "Mr. Swenson, here is something that will help you"?

A. I don't remember; I don't think I did.

Q. You were very anxious, were you not, to help Mr. Swenson?

(Testimony of Grace Snyder.)

A. I was not anxious to help anybody; I was anxious to obey the Court.

Q. And when did you last have this before today?

A. The package? When I brought it down.

Q. I am not talking about the "package." When did you last have it?

A. It was in the package.

Q. Will you answer the question?

A. In the package—a week ago, yes, in the group, in the bunch.

Q. (indicating). Sorry I cannot read this.

A. I will get you somebody.

Q. Did you also tell Mr. Swenson early after you had left the office of the Cantu—also, tell him that you had a certain rubber stamp which he ought to know about, in order to get [82] the facts?

A. I don't remember anything about it.

Q. You knew about that, didn't you, though?

A. I had the rubber stamp?

Q. Yes.

A. Surely, I was instructed to keep it with the other things.

Q. You did not tell Mr. Swenson about that?

A. I think I told the Postal Inspectors what all I had; I was requested to.

Q. You told me when I called you up you did not know what you had?

(Testimony of Grace Snyder.)

A. Yes, I did not remember; I could have gone to the basement and looked it up but I was too busy. If you had asked me to, I might have.

Mr. WETTRICK.—That is all.

Redirect Examination.
by Mr. DeWolfe.

Q. Did you bring this book down when Mr. Wettrick demanded—and bring it in one package?

A. Yes.

Recross Examination.
by Mr. Wettrick

Q. Have you brought everything down now that belongs to Mr. Wolfe and the Cantu?

A. Yes, everything.

Q. Are you sure?

A. Yes, everything except that stapler; I cannot find it any place.

Q. And the typewriter? [83]

A. Yes.

Q. That is all?

A. Yes, that is all I remember.

Q. How much of that material that you had at your office, did you deliver to Mr. Pratt's office?

A. Not any of it.

Q. How much did he come and get?

A. None of it; he would not have gotten it.

The COURT.—This 105 has not been admitted in evidence; in whose custody is it?

Mr. DE WOLFE.—The Clerk's—and identified exhibit.

(Witness excused.) [84]

DR. WALTER KELTON,

having been first duly sworn, testified as follows:

Direct Examination
by Mr. Flood.

My name is Walter Kelton and I am a duly licensed and practicing physician in the state of Washington.

Mr. SAVAGE.—We will admit all that. The doctor is qualified.

A. I had occasion to examine Conrad Wolfle at the Moore Hotel, in his room. At the time of that examination he was in bed with a cold compress over his forehead and face. I asked him what his symptoms were and he told me that he got up this morning—but first of all he said that he had had a headache the night before and that upon getting up this morning he was quite dizzy and as he tried to go on the street alone he would almost turn around and he nearly fell over. I asked him if he had ever had any symptoms of that kind before and he told me that he had on two or three occasions, and that he had had an injury several years ago, a blow on the head necessitating his being placed in a hospital for about ten days. He told me that he had a feeling of numbness in his left

(Testimony of Dr. Walter Kelton.)

arm, and that he could hardly move the left arm; that he was not sure of it when he was going to move it and he would try to move it and would find himself catching hold of it with his right hand and lifting it over. I found that he had a bounding, full pulse. I did not have my blood pressure apparatus with me, but I am quite sure from his pulse, the character of it, that he had a high blood pressure. He is the type of man that develops it [85] quite frequently. At any rate, with a history such as this, we are bound to consider that. The man was possibly seriously ill. I would not let a member of my family go out and attempt to do any duty of any kind. I would not let him get up in an elevated posture, if it was possible to avoid it. It is my judgment that this man is ill and not in condition to be in court. I think he has had a slight stroke. I think he has a little hemorrhage possibly in the brain at this time. I examined his heart, but there isn't anything that I could feel sure about with reference to his heart from the superficial examination which I made; but I would have to discredit him, pay absolutely no attention to the history of this sort of if I did not conclude that he was not able to be up and about.

Q. Did you predicate your opinion on subjective symptoms or were there any objective symptoms confirming it?

A. I mentioned the objective symptoms, bounding, full pulse, which means that his blood pressure

(Testimony of Dr. Walter Kelton.)

is pretty high. I told him I thought he ought to be in bed for several days.

Q. Do you think he could be in court here?

A. I don't think so. He told me he was going to try. He told me he was going to be here this afternoon and I told him, "You won't be in court or anywhere else with my permission."

Cross-examination
by Mr. Savage.

Q. When you made your examination was he in bed, doctor?

A. No. I did not make him get up in the course of the [86] examination. The only objective finding that I made was the bounding or full pulse. The other symptoms were subjective findings upon complaints that he made to me. This bounding pulse does not necessarily indicate that he had high blood pressure. This pulse might be due to nervousness, but he didn't seem to be nervous at all, although he could have been nervous without displaying it in any other manner except by this bounding or full pulse. Worry over the outcome of a trial which meant a great deal to him might be the cause of this full pulse, but as a rule when a patient is nervous there is normally a strong pulse. This man had a very bounding full pulse, such as we find in the character of condition I have indicated.

Q. If this blood pressure, the systolic, was 106, would you consider that high?

(Testimony of Dr. Walter Kelton.)

A. That is very high blood pressure. I did not take his temperature, and there was no way for me to make any other analyses or tests; neither did I take a sample of his urine and make an analysis of it.

Q. So might the only objective finding which you did make be due to a mental condition, that is a nervousness or apprehension?

A. Yes, it could be. Before I can answer as to how long he will be confined to his bed I will have to go back and follow up the condition that seems apparent at this time. I cannot give an opinion at the present time, but if my estimation of his condition is correct I should say that it would be several days before he could safely go ahead. I did not ask him when he retired last night. I do not know that it would have any effect upon his condition if he retired late, [87] such as midnight or later, if he got his full quota of sleep. However, I do recall that he told me that he did not sleep well last night.

Q. Doctor, do you realize the stage which this case has reached, the point which it has reached, that testimony is no longer required, that he would not have to take the witness stand; all he would have to do would be to sit here and listen to the argument.

Mr. FLOOD.—I object to that as incompetent, irrelevant and immaterial, assuming something that may not necessarily be true. We are still in the

(Testimony of Dr. Walter Kelton.)

trial of this case and he is subject to all the vicissitudes, whatever they may be.

The COURT.—Objection overruled. You can bring out anything further on your direct.

A. It wouldn't make any difference to me, Mr. Savage, at all where he had to be, if he had to be in an erect position; if he had to make any exertion at all, I would say from my interpretation of his condition that it would be unsafe for him to be up anywhere, even up in his room.

Mr. SAVAGE.—Q. Would you say that even without taking his blood pressure, doctor?

A. Well I—well lots of times we are placed in predicaments where it is just impossible to make a full and complete examination. As I say, I would follow this up, but I think the man has a right to have this thing done. I think he has a right to have this done. I gave him some medicine or sent some medicine up to him and I am going back this afternoon or in the morning and take his blood pressure, take a bottle along for a sample of urine and I am going to make a full and complete examination that would help me to [88] judge the question of whether or not he was to be laid up for a long time. I have seen cases just exactly like this by men, working men, and I have urged them not to go ahead, and I might mention a name that would be well-known and of a man who just passed away within the last few weeks. I had urged him not to go ahead with his work. I have also seen cases of

(Testimony of Dr. Walter Kelton.)
exactly the same type that went ahead and nothing happened to them. A doctor has to give the benefit of the doubt to cases of this kind. In this case of course I am compelled to rely very largely upon statements which he himself made, but I do not believe this man could tell me the symptoms that he had as accurately as he did unless he was acquainted with medicine. He would have had to supply it out of a text book or have had somebody tell it to him, or urged him to make the statement that he did; and he did not make these statements as if he had been instructed to do so, but they were pulled out of him in the course of my examination and in questioning him as to his condition.

Redirect Examination.
by Mr. Flood.

Q. Doctor, does a numbness of the left arm such as you observe indicate any organic cerebral lesion?

A. Well it doesn't exactly indicate it; it is suggestive of it. If such a lesion occurred it would be on the opposite side. I did not observe any findings which would establish an organic lesion of that character or which would tend to establish such a lesion, as distinguished from malingering on the part of the patient, and I look for that always in any kind of an injury case, I look for malingering but this man wanted [89] to get up though according to his own statement, and come down here

(Testimony of Dr. Walter Kelton.)

this afternoon. He said, "I think, this trial is nearly over and I want to get it over with." I said, "You can't do it; you can't go this afternoon." If his condition is improving I am not able to say whether I would permit him to appear here tomorrow morning as I would have to take my blood pressure apparatus and everything and go and make a complete examination, get laboratory findings and everything. In my opinion, medically, it would entail an element of danger for him to appear this afternoon and continue with the trial. I would give him the benefit of the doubt.

The COURT.—Q. What difference is there in his being here or being in the hotel in bed?

A. Well anything that is apt to excite him at all, anything that is apt to shoot the blood pressure up the slightest bit.

Q. Isn't the dread and uncertainty of this case fully as liable to excite him as to have the matter over with?

A. I hardly think so. I gave him some morphine and instructed him to stay flat on his back, not to get up at all, remain in bed in the quiet of his room. Now I think that that is the better procedure. I would not advise you to come down here and sit in a case and hear it in a reclining posture. I wouldn't advise you to come down here and try a case in the same condition. I wouldn't think of doing such a thing unless I was absolutely sure of every point that is necessary to be considered be-

(Testimony of Dr. Walter Kelton.)

fore passing an ultimate opinion. Anything is liable to raise the blood pressure.

Mr. SAVAGE.—Q. Doctor, is your chief concern over the blood pressure at the present time? [90]

A. Well my chief concern is over the hemorrhage that I think he has had in his brain; and if he has a high blood pressure, which I believe he has, it would increase the tendency to further hemorrhages.

Q. Well, assuming that his blood pressure was only 106, would that change your opinion at all?

A. Yes, that would change my opinion. In that case my opinion would be that he would be far less liable to have further hemorrhages, that is assuming that he has had a hemorrhage now.

The COURT.—Q. You have reached the conclusion that he has had a hemorrhage merely by what he told you and your conclusion that he did have high blood pressure, without testing it?

A. Well, the fact that he has had a blow on the head and has had similar symptoms before and was once hospitalized for eight or ten days—now that is his history—and if that is true then I would have to discard some of the other things and possibly alter my opinion altogether.

Mr. FLOOD.—Q. This condition, doctor, could be a post traumatic condition?

A. Yes.

Q. Is it one such as, from the history you have had, you would consider a post traumatic condition?

(Testimony of Dr. Walter Kelton.)

A. Yes.

Q. Resulting from a blow on the head?

A. Yes.

Q. Where do you think the original cerebral lesion occurred, under the history you have and the observation that you made? [91]

A. At the time when he received the blow on the head over in the mountains somewhere in the middle west.

Q. And you think the condition such as you found is the recurrence of hemorrhage or is it a secondary after affect of the original hemorrhage? In other words, is there a repetition of hemorrhage there?

A. Well, you are asking me to say a whole lot on an essentially superficial examination, which I don't like to do. I realize the gravity of the situation, the importance of this man's appearance in court this afternoon and if I could find a reasonable excuse for permitting him to come I certainly would do so; but I think that it is the duty of a doctor to give a man like this the benefit of the doubt. He gave me a history of having had a headache all night last night; he had a cold compress over his head this morning, and he looked to me to be a sick man. He kept rubbing his left hand this way and rubbing it all the time. He didn't know that I knew anything about what that meant in these old men. He gave me a history of having been examined two weeks ago by Dr. Irwin of

(Testimony of Dr. Walter Kelton.)

this city but of course he did not know what Dr. Irwin found. He also gave me a history of a condition similar to this about two months ago in Spokane and of having been examined by a doctor, whose name I forget. This I believe was about two months ago, I think he gave me a history of at least three or these spells. I don't know the exact time, but a short time ago, a few weeks ago. And another was I think in Montana. As far as the safety of the patient is concerned, I think it would be unwise to go ahead with him here this afternoon or at least until we have had an opportunity to fully study out his case. I don't know [92] that I am right, but I certainly think the man is entitled to that much consideration.

Mr. SAVAGE.—Q. Did you examine the pupil of his eyes?

A. I didn't have an ophthalmoscope to examine him. I just looked at them. I did not observe any irregularity. There would be some difference if he had had a serious hemorrhage. I did not test him to find out what his nervous reflexes were.

Mr. FLOOD.—Q. Doctor, the reflexes may or may not be of consequence in such a paralysis as you consider that he may have had?

A. Yes.

Q. What would your answer be to that, would the reflexes necessarily be conclusive?

A. They would not be conclusive, no. They would leave me just in the position I am in at the

(Testimony of Dr. Walter Kelton.)

present time. I think the man has a right to have a little further study before considering.

The COURT.—Q. Doctor, do you specialize in any particular branch?

A. General surgery.

Mr. FLOOD.—Q. Have you had any experience in diagnosing cases of cerebral hemorrhage and paralysis?

A. Oh, yes.

Q. Is it limited or has there been any extent of such practice?

A. Well I have had a great deal of experience with traumatic injuries. I was a medical director for the Department of Labor and Industries for years; and I am medical referee for several accident insurance companies and for the [93] city. I still am for the city and in such capacity I have occasion to examine injured men, I think about as many as any other doctor in Seattle.

(Witness excused.) [94]

DR. DON H. PALMER,

being first duly sworn as a witness in behalf of the Government, testified as follows:

Direct Examination
by Mr. Savage.

Q. Give the reporter your full name will you please.

A. Don H. Palmer. I am a duly licensed and practicing physician in the State of Washington. Have practiced here for the past twenty-five years. I specialise in general surgery. I met Conrad Wolfle this morning and made an examination of him in room 405 Moore Hotel about half past eleven, after Dr. Kelton had been there. I went over him from head to foot. I took his pulse, which was 70 and normal. His temperature was 96.3, which was about normal. His respiration was 18, which is normal. His blood pressure was diastolic 100 and systolic 175, which is a little erratic. His eyes reacted normally to light and accommodation; that is the pupils dilated and contracted as they normally should from light, and dilated and contracted as they normally should for distance and up close. When you look at a distance the pupil dilates and when you look up close it contracts. His eyes moved easily in all directions. He could follow your finger up or down, or when you came toward him his eyes will converge; no disturbance that I could elicit in his ears. He has a scar on his forehead, on the left side of his forehead, a

(Testimony of Dr. Don H. Palmer.)

slight scar where he said that he had been injured, struck over the head with a pipe some time back and said he was unconscious for approximately half an hour, and was disabled for about eleven days or thereabouts; eleven days he was in the hospital. His heart sounds are normal. His lung [95] sounds are normal. No disturbance I could find in his chest at all. His chest was normal. He has a large scar about seven inches long, the site of an abdominal operation, and he has a good sized hernia there. I tested out his knee jerks but his knee jerks are normal. Mr. Wolfe says he is dizzy when he stands up and he also told me that he had lost approximately forty pounds in weight in the last six weeks. It is quite evident that he has lost weight because his skin is loose. You can feel that there has been a loss of weight. He also stated that there was considerable disturbance in his urine, that is his urine was quite strong. I was unable to get a specimen of urine to examine. I tried to but was unable to procure it. He got up and said that he was dizzy as soon as he stood up. That of course you have to take his word for. It would not be beyond reason to find a condition in a man who has lost so much weight, who has gone through considerable worry to develop at this time an acidosis that might make him dizzy, but there is no evidence that I could find, no evidence of any paralysis. He seemed to be afraid of a paralysis but I found no evidence of any. In my opinion

(Testimony of Dr. Don H. Palmer.)

there would be no danger of his being up and about. He has got to have the discomfort of perhaps dizziness. I wouldn't say that he was not dizzy. There was no evidence that I could see of a brain hemorrhage. Of course you cannot see a brain hemorrhage. If a man has a hemorrhage of any size you will find manifestations that come from the hemorrhage, such as lack of consciousness, evidence of paralysis. That is progressive in character, starts involving a small area and continues to enlarge. It might, for instance, start with the knee and eventually involve the foot of the leg, [96] the side of the face, trunk. I did not find any evidence of paralysis in either of his arms but he stated he had a feeling of numbness in his left arm. However, he was able to move his left arm and I could find no disturbance of any of the reflexes in the left arm. I manipulated the fingers of his left hand. That is as far as I could go in my examination in the length of time that I had. I would like to have had a specimen of the urine to check over but I was unable to get it.

Q. In your professional opinion, could he attend the arguments of this trial without endangering his life or his health?

Mr. FLOOD.—I am going to object to this question—attend this trial—counsel seems to think it is merely argument.

Mr. SAVAGE.—Q. The remainder of the trial, we will put it that way, if counsel wants it that way.

(Testimony of Dr. Don H. Palmer.)

The COURT.—Overruled.

Mr. FLOOD.—Exception.

The WITNESS.—Well, what does he have to do?

Mr. SAVAGE.—I don't know that counsel will permit me to tell you. I may state that all the evidence is in at the present time and we are beginning the arguments in the case.

A. Well, he would just be an interested spectator, in other words.

Q. Yes, of an interested spectator, probably nothing but sit in his chair and listen to the arguments of counsel and the instructions of the Court and the verdict of the jury when it comes in.

A. I would not think that that would have any influence on his general health. I do not think the man feels up to [97] par, but I don't think anybody would under the circumstances.

Cross-examination
by Mr. Flood.

Q. You think that is a condition that just came on recently, doctor?

A. Yes.

Q. Your answer that it would do him no harm to be here is predicated upon your opinion that there is no numbness in the arm or a paralysis?

A. No, I wouldn't say that he didn't have numbness in his arm, but my interpretation for the numbness in that arm is due to the fact that he has been worried here, has lost in weight, and has not

(Testimony of Dr. Don H. Palmer.)

been following his usual routine, has not been drinking enough water, has not been eating enough sugar; he needs more fruit juices. That condition is not so uncommon. And that don't mean that a man is having a hemorrhage nor that he is going to be paralyzed, necessarily. I did not get the man is a distinct malingerer. I think he has some dizziness, that he is conscious of, but that is not uncommon at all.

Q. The blood pressure which you found of 175 diastolic is rather a higher blood pressure, is it not?

A. That is higher than it should be, yes.

Q. And it is 30 or 35 pounds higher than any insurance company would approve?

A. I don't think any insurance company would take him. I don't remember just what his age is.

Mr. SAVAGE.—His age is 61.

A. They don't usually take them over 60.

Q. Doctor, it is true, also, is it not, that the accident [98] which he suffered and the conditions which you found might be a post traumatic condition?

A. I don't think so. I inquired carefully into the character of the injury and the man who cared for him. There was no history of a skull fracture. The man was knocked out, in all probability, but that does not necessarily do anybody any harm to be knocked out. Boxers frequently are knocked out and it *does do* them any harm.

(Testimony of Dr. Don H. Palmer.)

Q. You think he can stand it at sixty years of age as well as a boxer? Is that your opinion?

A. Yes, but that produces unconsciousness. You have to observe with some considerable caution. You have to prove to yourself that there is no damage done.

Q. Now, if you had a case, doctor, where a man sixty years of age suffered a blow on the skull producing unconsciousness for a certain period of time, we will say for a half or three quarters of an hour, and that during that interim he was taken to a hospital and treated for concussion of the skull and kept there for a period of eleven days——

A. Concussion of the skull or concussion of the brain?

Q. Concussion of the brain, and kept there for a period of eleven days and treated in the usual manner, and then thereafter he returned to his home and was subsequently treated by his own personal doctors, including Dr. Alquist, the distinguished Dr. Alquist of Spokane, and Dr. Lewis of Spokane, and then he was examined by these doctors and was diagnosed as suffering from a post-cerebral hemorrhage and that he had acute spells of dizziness and staggering and headaches for three and four days, during which his doctors advised him to remain in bed on two occasions, that he then came to Seattle within a period [99] of a month after the last spell——

(Testimony of Dr. Don H. Palmer.)

The COURT.—No, no, but you don't in your assumption, you don't state the length of time this happened.

Mr. FLOOD.—The original injury having occurred in the fall, about the month of October, 1931, and the first subsequent spell having occurred a period of a month or six weeks later, and the following spell a period of a month or so later, and thereafter he came to Seattle early in January and resided——

The COURT.—Excuse me. You said 1931.

Mr. FLOOD.—Yes.

The COURT.—October, 1931, do you mean that?

Mr. FLOOD.—Yes, and he came to Seattle in January of 1932, this present year, and went through the process and the ordeals, such as they may be, of standing a trial wherein he is defendant and the United States of America is the plaintiff, and that a period of two weeks ago he had severe headaches and dizziness and complaints similar to those which he gave you when you examined him today, and that again today he suffered headaches and dizziness and complaints similar to those which you found and obtained from him when you examined him today, would you think, considering that under these circumstances his condition is such as you found it today, might be a post traumatic condition resulting from the injury received in the early fall of 1931?

(Testimony of Dr. Don H. Palmer.)

A. I don't believe that the condition that I found today has anything to do with his injury, that he is said to have sustained from the blow on his head with the gas pipe. Now, assuming that the man had a hemorrhage at that time and that he didn't have the difficulties that you have recited, that [100] would—the men who saw him at that time are best able to judge, and if a man like Alquist believed that there was a hemorrhage there, I think Alquist is a capable competent man and he would be able to tell a hemorrhage as well as Doctor Kelton or myself.

Q. Do you know Dr. Alquist?

A. Yes, I know Dr. Alquist. He is all right, but the diagnosis of a hemorrhage without more sustaining symptoms than have been presented, without any evidence of a skull fracture, without the evidence of any paralysis, is more or less a matter of supposition. In other words, you cannot take a photograph of the brain and find it. You must rely to a very large extent upon the symptoms reported by the patient himself.

Redirect Examination
by Mr. Savage.

Q. Doctor, assuming that the defendant retired last night about midnight, would that result in any of these findings which you found this morning; have any influence upon them at all?

(Testimony of Dr. Don H. Palmer.)

A. Might have some influence. I don't know what he was doing up to midnight. There are many things that might have happened up to midnight that would influence his condition in the morning.

The COURT.—Q. The dread and uncertainty of the case in which he is charged with a serious offense the question has to do now, the question we are concerned with here has to do with the condition of his health from continued worry, an uncertainty as compared with the risk he would run if he [101] comes here and has it over with in a couple of days?

A. I don't think it would make any difference whether he comes in this afternoon or tomorrow afternoon or next week.

Mr. FLOOD.—Q. And that, doctor, is your opinion in spite of the fact that you found a high blood pressure?

A. Yes. I don't think 175 blood pressure in a man 61 years of age means very much.

(Witness excused.)

DR. KELTON,

recalled as a witness in behalf of the defendant, testified as follows:

Direct Examination
by Mr. Flood.

Q. Doctor, does the testimony which you just heard from Dr. Palmer, whom you no doubt know, particularly the testimony with regard to the blood pressure of 100 systolic and 175 diastolic, change the opinion you expressed as to his condition?

A. It emphasizes my opinion that I just expressed. I know Dr. Palmer. He is one of my most intimate friends and I have regard for his opinion in all matters. It doesn't make any difference what the age is, a blood pressure of over 144, there is hardly an insurance company in America that will accept the individual, if he is 75 or 95. The fact of the matter is with the high blood pressure that he has it is dangerous for him to participate in any activity. As a matter of fact, from what I have heard, Your Honor, that this case has been going on for five weeks, I think the strain of the case upon him is very probably the cause of his present condition. I think that is just about what has brought it on. He has high blood pressure. That is all there is to it.

(Witness excused.)

Motion for continuance on the ground of defendant's illness was denied by the Court and exception taken by defendant and exception allowed.

[Endorsed]: Lodged in the United States District Court, Western District of Washington, Northern Division, September 20, 1932. Ed. M. Lakin, Clerk. By T. W. Egger, Deputy.

Received a copy of the within proposed Bill of Exceptions this 20th day of September, 1932.

ANTHONY SAVAGE,
Attorney for Plaintiff.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division, October 17, 1932. Ed. M. Lakin, Clerk. By S. Cook, Deputy. [103]

[Title of Court and Cause.]

ORDER SETTLING BILL OF EXCEPTIONS.

The foregoing 36 pages truthfully set forth proceedings had upon the trial of the defendant, Conrad Wolfle, in so far as they are stated. In addition to the testimony set out in said 36 pages hereinabove, other testimony relevant to and tending to prove the guilt of the defendant with respect to the first four counts charged in the indictment herein, was introduced, received and considered, and the foregoing is hereby certified and allowed as a bill of exceptions, and as such is hereby certified and allowed.

It is further ordered that Government's exhibit number 99 be considered a part of this bill of ex-

ceptions and that the Clerk of this Court do transmit said original exhibit number 99 to the Clerk of the Circuit Court of Appeals for the Ninth Circuit in lieu of copy thereof.

Done in open Court this 17th day of October, 1932.

E. E. CUSHMAN,
United States District Judge.

[Endorsed]: Filed October 17, 1932. Ed. M. Lakin, Clerk. [104]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the above-entitled Court:

Will you please prepare and certify a transcript of the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, in the above-entitled cause, and include the following papers and proceedings:

1. Indictment.
2. Motions and demurrers, and Court's rulings thereon and Exceptions.
3. Motion for Continuance December 21st.
4. Affidavits of Moser, Jennings, and deWolfe.
5. Memorandum Decision denying continuance.
6. Written exceptions to above.
7. Plea.

8. Verdict and sentence.

9. Motion for new trial.

10. Motion in arrest of judgment.

11. Court's ruling denying motion.

12. Order of Court extending time to and including June 20, 1932, for lodging bill of exceptions and extending term of Court therefor.

13. Petition for appeal.

14. Notice of appeal.

15. Assignments of error.

16. Citation on appeal.

17. Order allowing appeal.

18. Bond on appeal. [104-a]

19. Order extending time for lodging and filing bill of exceptions and extending term of Court therefor to September 20, 1932.

20. Order extending time for settling bill of exceptions and term of Court therefor to October 3, 1932.

21. Bill of Exceptions.

22. Journal record of hearing on settlement of Bill of Exceptions October 3, 1932.

23. Order settling bill of exceptions.

24. Praecipe.

WETTRICK, WETTRICK & FLOOD,
805 Arctic Building, Seattle,
Washington,
Attorneys for Defendant.

Received a copy of the within Praecipe this 9th day of November, 1932.

ANTHONY SAVAGE,
Attorney for Plaintiff.

[Endorsed]: Filed November 9, 1932. Ed. M. Lakin, Clerk. [104-b]

[Title of Court and Cause.]

CERTIFICATE OF CLERK OF U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD.

United States of America,
Western District of Washington.—ss.

I, Ed. M. Lakin, Clerk of the United States District Court for the Western District of Washington, do hereby certify that this typewritten transcript of record, consisting of pages numbered from 1 to 105, inclusive, is a full, true and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause, as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court at Seattle, and that the same constitutes the record on appeal herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office or on behalf of the appellant for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit, in the above-entitled cause, to wit: [105]

Clerk's fees (Act Feb. 11, 1925) for making record, certificate or return, 259 folios at 15c	$38.85
Appeal fee (Section 5 of Act)	5.00
Certificate of Clerk to Transcript of Record	.50
Certificate of Clerk to Original Exhibits	.50
	$44.85

I hereby certify that the above cost for preparing and certifying record, amounting to $44.85, has been paid to me by the attorney for the appellant.

I further certify that I attach hereto and transmit herewith the original citation on appeal issued in this cause.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of said District Court at Seattle, in said District, this 15th day of November, 1932.

[Seal] ED. M. LAKIN,
Clerk of the United States District Court
for the Western District of Washington,
By T. W. EGGER,
Deputy. [106]

[Title of Court and Cause.]

CITATION ON APPEAL.

The President of the United States of America, to the United States of America, and to Anthony Savage, United States Attorney for the Western District of Washington, GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be holden at the City of San Francisco, within thirty (30) days from the 16th day of April, 1932, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the Western District of Washington, Northern Division, wherein Conrad Wolfle is the appellant and the United States of America is the appellee, to show cause, if any there be, why the judgment in the said appeal mentioned should not be corrected and speedy justice should not be done on that behalf.

WITNESS the Honorable JEREMIAH NETTERER, Judge of the District Court of the United States for the Western District of Washington, Northern Division, this 18th day of April, 1932.

[Seal] EDWARD E. CUSHMAN,
United States District Judge.

Received a copy of the within Citation this 16th day of April, 1932.

TOM DEWOLFE,
Assistant United States Attorney.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division, Apr. 18, 1932. Ed. M. Lakin, Clerk. By S. Cook.

[Endorsed]: No. 7007. United States Circuit Court of Appeals for the Ninth Circuit. Conrad Wolfle, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed November 17, 1932.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit.

No. 7007

United States

Circuit Court of Appeals

For the Ninth Circuit.

CONRAD WOLFLE,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

At a stated Term, to wit, the October Term, A. D. 1932 of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Thursday the twenty-third day of March in the year of our Lord One Thousand Nine Hundred and Thirty-three.

Present: Honorable CURTIS D. WILBUR, Senior Circuit Judge, Presiding, Honorable WILLIAM H. SAWTELLE, Circuit Judge, Honorable JULIAN W. MACK, Circuit Judge.

No. 7007

CONRAD WOLFLE,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

ORDER OF SUBMISSION

ORDERED above cause argued by Mr. H. Sylvester Garvin, counsel for appellant, and by Mr. Anthony Savage, United States Attorney, counsel for the appellee, and submitted to the court for consideration and decision.

At a stated Term, to wit, the October Term, A. D. 1932 of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the tenth day of April, in the year of our Lord One Thousand Nine Hundred and Thirty-three.

Present: Honorable CURTIS D. WILBUR, Senior Circuit Judge, Presiding, Honorable WILLIAM H. SAWTELLE, Circuit Judge, Honorable JULIAN W. MACK, Circuit Judge.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT.

By direction of the court, ORDERED that the typewritten opinion this day rendered by this court in above cause be forthwith filed by the clerk and that a judgment be filed and recorded in the minutes of this court in accordance with the opinion filed.

[Title of Court and Cause.]

OPINION.

Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Before: WILBUR, SAWTELLE and MACK, Circuit Judges.

WILBUR, Circuit Judge:

Appellant was convicted of using the mails to defraud in violation of §215 of the Criminal Code (18 U. S. C. A., §338). The only questions pressed on the argument are the correctness of the rulings of the court on the admission of the testimony of the witness Grace Snyder, and in denying a continuance at the conclusion of the testimony by reason of the illness of the appellant. The witness, Grace Snyder, testified that the defendant dictated to her a letter to his wife; that she took the dictation down in shorthand and that the letter contained the following reference to the Cantu Mine: "I am going to break in and whenever I do, I am going to rob every last one of them blind." Several objections were made to the introduction of this testimony, but the only one pressed in the argument is the objection that it is a privileged communication between husband and wife.

We think it clear that the statement of the husband to his stenographer is not privileged even though it was intended to be communicated to his wife. The

law protecting a spouse from the testimony of the other spouse does not extend to oral communications to third persons, even if intended for transmission to the other spouse. Appellant cites no case to the contrary. The quotation in the brief from Hammons v. State (Ark.), 84 S. W. 718, seems to support appellant's contention, but an examination of the case discloses that it tends to support the ruling of the trial court in the case at bar. That court said:

> "The authorities are practically agreed that when a conversation between husband and wife is overheard, it may be testified to by the third party." Citing, 1 Greenleaf on Evidence, §254; Comm. v. Griffin, 110 Mass. 181; Fay v. Guynon, 131 Mass. 31; Allison v. Barrow, Tenn. 91 Am. Dec. 291; State v. Center, 35 Ft. 378; Griffin v. Smith, 45 Ind. 366.

It is also held that a conversation is not privileged when made in the presence of third persons, citing Reynolds v. State (Ind.), 46 N. E. 31; Mainard v. Beider, 2 Ind. App. 115; Robbs Appeal, 98 Pa. 501.

The case at bar was tried in the United States District Court for the State of Washington, and in the absence of Federal legislation upon the subject the law of the territory of Washington at the time of her admission into the Union as a state controls in the trial of criminal cases in the Federal courts sitting therein. Rendleman v. U. S., 18 F. (2d) 27; Olmstead v. U. S., 277 U. S. 438, 466-7, 469; Tinsley v. U. S., 43 F. (2d) 890, 895.

The statute of the territory of Washington on the

subject of privileged communications between husband and wife was contained in §392 of the Code of 1881 and is now embodied in Hill's Statutes and Codes of Washington, §1649. It was derived from a similar code section in the State of California (Cal. Code Civ. Proc., §1881). That section of the California Code has been adopted in substantially the same form in all the states in this circuit (Oregon, §733 Ore. Laws 1920; Arizona, §4412 Struckmeyer's Rev. Code 1928; Nevada, §5424 Rev. Laws Nevada, 1912; Idaho, §7937, Idaho Comp. Stats. 1919; Montana, Rev. Code Mont. 1921, §10,536), and it has been uniformly held that the privilege does not extend to oral communications to third persons nor to written communications entrusted to or coming into the hands of third persons. With reference to these code sections thus adopted by the State of Oregon the Supreme Court of that state in State v. Wilkins, 72 Ore. 77, while recognizing that some courts have held that a written communication from the husband to the wife should be excluded as privileged "no matter into whose possession the communication, if in writing, may fall," also held that the authorities all agree that if oral communications between the husband and wife were overheard by third parties they may be given in evidence by the third party. The court also declined to follow the decisions of other states holding that the privilege extended to a writing between them which had come into the possession of third parties and decided that the purpose of the rule was to protect the speaker or writer from the testimony of the other spouse and that the privilege does not extend to communications

when disclosed to strangers. The same view was expressed by the Supreme Court of the State of Washington in an earlier case, State v. Nelson, 39 Wash. 221. In State v. Falsetta, 43 Wash. 159, it was held that the rule concerning privileged communications between husband and wife had no application to the testimony of a third person who overheard such communication. (See also State v. Rasmussen, 125 Wash. 176.) The same rule has been followed in California (People v. Chadwick, 4 Cal. App. 63, 72; People v. Swaile, 12 Cal. App. 192, 196). The same rule has also been followed in Arizona (Chas. De Leon v. Territory of Arizona, 9 Ariz. 161), and in Idaho as to communications between attorney and client (State v. Perry, 4 Idaho 224).

With reference to the denial of appellant's motion for continuance, it should be stated that at the conclusion of the evidence the appellant claimed to have suffered a slight apoplectic stroke. He was thereupon examined by two physicians who testified in court with reference to his condition. One of them testified that in his opinion the appellant had suffered a slight stroke. This opinion was based in part upon the statement of the defendant to this physician that he had a feeling of numbness in his left arm and that he could hardly move that arm. The other physician testified that in his opinion the defendant had not suffered a stroke, that he found no evidence of paralysis in the arms, and that in his opinion he could attend the balance of the trial without injuring his health. The court, under the circumstances, required the trial to proceed and the

appellant remained in attendance throughout the argument. No exception was taken to this ruling, and there was no abuse of discretion in it.

Appellant also presented in his brief an assignment of error based upon a denial of his motion for continuance some three weeks before the trial, but properly conceded on the argument that this court could not review the order because the matter was not included in a bill of exceptions (Beach v. U. S., 35 F. (2d) 839). Moreover, it appears from the affidavit which appellant has printed in the transcript that his claim of ill health was controverted by affidavits, and a ruling on that conflict adverse to the appellant cannot be reviewed.

Judgment affirmed.

[Endorsed]: Opinion. Filed Apr. 10, 1933. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 7007

CONRAD WOLFLE,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

UPON APPEAL from the District Court of the United States for the Western District of Washington, Northern Division.

THIS CAUSE came on to be heard on the Transcript of the Record from the District Court of the United States for the Western District of Washington, Northern Division, and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

[Endorsed]: Filed April 10, 1933. Paul P. O'Brien, Clerk.

At a stated Term, to wit, the October Term, A. D. 1932 of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday, the nineteenth day of June in the year of our Lord One Thousand Nine Hundred and Thirty-three.

Present: Honorable WILLIAM H. SAWTELLE, Circuit Judge, Presiding, Honorable FRANCIS A. GARRECHT, Circuit Judge.

[Title of Cause.]

ORDER DENYING PETITION FOR A REHEARING.

Upon consideration thereof, and by direction of the court, IT IS ORDERED that the petition of appellant, filed May 9, 1933, for a rehearing of above cause be, and hereby is denied.

[Title of Court and Cause.]

MOTION TO STAY ISSUANCE OF MANDATE.

Now comes CONRAD WOLFLE, the appellant in the above-entitled court, by his attorneys, and represents, petitions and moves:

I.

Appellant is filing his application to the Supreme Court of the United States for a writ of certiorari for the review of the judgment of this court filed herein on June 19, 1933.

II.

Under U. S. Code Ann. Title 28, Sec. 350, such application will not operate to stay the mandate or other process except by special order of the court; and under Rule 32 such mandate or other process will issue, as of course, after the expiration of five (5) days from the date of the order denying the petition for rehearing herein, unless otherwise ordered.

III.

In view of the nature of such application for a writ of certiorari to the Supreme Court of the United States and the end sought to be accomplished thereby, no useful purpose would be subserved if the mandate or other process of this court should issue before the court has disposed of such petition, but would cause unnecessary complication, delay and hardship.

IV.

That in the judgment of your petitioner, the decision of the Circuit Court of Appeals conflicts on an important question of local law with the applicable

decisions, and deprives the petitioner of a privilege granted by local statute and by the common law, and has so far departed from the course of judicial proceedings and construction as to call for the exercise of the power of supervision of the Supreme Court.

V.

Appellant moves and prays for an order staying the mandate herein until August 30th, 1933, to enable him to prepare and present his application for the writ to the Supreme Court.

Dated at Seattle, Washington, June 21, 1933.

WETTRICK, WETTRICK & FLOOD,
H. SYLVESTER GARVIN,
Attorneys for Appellant.

[Title of Court and Cause.]

ORDER STAYING MANDATE.

On motion of counsel for appellant, the petitioner in the above-entitled cause, and good reason appearing therefor,

It is now here ORDERED, that the issuance of the mandate of this court in the above entitled cause be and the same is hereby stayed pending application by the appellant to the Supreme Court of the United States for a writ of certiorari, provided said application is made on or before August 15, 1933.

Dated this 23 day of June, 1933.

WM. H. SAWTELLE,
U. S. Circuit Judge.

[Endorsed]: Filed June 23, 1933. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 7007

CONRAD WOLFLE,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, PAUL P. O'BRIEN, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing one hundred and forty-six (146) pages, numbered from and including 1 to and including 146), to be a full, true and correct copy of the entire record, excluding original exhibits, of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellant and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 3rd day of August, A. D. 1933.

(Seal) PAUL P. O'BRIEN,

Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 16, 1333.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted, limited to the question as to what law is applicable to the determination of the question of privilege which was raised at the trial. The case is advanced and assigned for argument immediately following No. 394 on Monday, November 13 next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.